14399

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 116.

W. W. CARGILL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA EX REL. THE RAILROAD AND WAREHOUSE COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED AUGUST 12, 1900.

(17,486.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 28, 1900.

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STATE OF MINNESOTA :

Supreme Court, April Term, A. D. 1899.

TE OF MINNESOTA *ex Rel.* THE RAILROAD & WARE-house Commission, Appellant,
vs.
W. CARGILL COMPANY, a Corporation, Respondent. } Petition.

the Hon. Charles M. Start, chief justice of the supreme court of he State of Minnesota :

The petition of W. W. Cargill Company, a corporation, the de-dant and respondent in the above-entitled action, respectfully ws :

That on the 2nd day of August, A. D. 1899, the final judgment said action was entered in said supreme court, said court being tribunal having jurisdiction under the laws of the said State of nesota to render final judgment in all proceedings of that nature, avor of The State of Minnesota *ex rel.* The Railroad & Ware-se Commission and against your petitioner.

That said proceeding was an action brought under chapter 148 he General Laws of the State of Minnesota for the Year 1895 petually to enjoin and restrain your petitioner from further g or operating a certain elevator owned by it and situated on right of way of the Chicago, Milwaukee & St. Paul Railway npany, in the village of Lanesboro, county of Fillmore, State of nesota, for the purpose of receiving, shipping, storing, or hand-g wheat or other grain in the same until it shall have become y licensed therefor by the said Railroad & Warehouse Commis-n under the laws of said State.

That in said action your petitioner claimed that the provisions each thereof of said chap. 148 of the Gen. Laws of Minnesota for the Year 1895 considered as applicable to the facts in this case were not enacted in the legitimate exercise by the State of its police power ; do not conduce to any legitimate police pose or constitute any police regulations in fact ; have no rela-whatever to or tendency to accomplish any matter or thing ich is a proper subject of police regulation ; are unreasonable constitute an arbitrary and unwarranted interference with the t of a person to pursue a lawful business in the handling of own sole property for his own sole purpose, and are unconsti-onal, illegal, and void.

That in said action your petitioner claimed that the provisions each thereof of said chapter 148 of the Gen. Laws of Minnesota the Year 1895 considered as applicable to the facts of said case repugnant to sec. 1 of art. 14 of the amendment to the Constitu-n of the United States, and are unconstitutional, illegal, and d.

That in said action your petitioner claimed that the provisions each thereof of said chap. 148 of the Gen. Laws of Minnesota

for the Year 1895 considered as applicable to the facts of said case are repugnant to sec. 2 of art. 4 of the Constitution of the United States, and are unconstitutional, illegal, and void.

That in said action your petitioner claimed that the provisions and each thereof of said chap. 148 of the Gen. Laws of Minnesota for the Year 1895 considered as applicable to the facts of said case are repugnant to that clause of sec. 8 of art. 1 of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations and among the several States and with the Indian tribes, and are unconstitutional, illegal, and void.

That in said action your petitioner claimed that the provisions of said chap. 148 of the Gen. Laws of Minnesota for the Year 1895 were contrary to art. 14 of the amendment to the Constitution
3 of the United States providing that no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the law, as well as in other respects.

That in said action your petitioner claimed that any authority exercised or attempted to be exercised under said chap. 148 of the Gen. Laws of Minnesota for the Year 1895 was illegal and unlawful and in violation of the provisions of the Constitution of the United States above named, as well as other provisions thereof.

That in said proceeding your petitioner also claimed that said chap. 148 of the Gen. Laws of Minnesota for the Year 1895 and the exercise or any attempt to exercise authority thereunder was in violation of the fundamental principles of justice which underlie the system of the State and Federal governments of the United States.

That the final judgment of said supreme court of the State of Minnesota was against each and all of the rights so claimed by your petitioner in said matter, all of which will more fully appear by the record of said proceedings now remaining in said supreme court.

Wherefore, forasmuch as your petitioner believes there was manifest error in said decision of said court against the several claims of your petitioner, as heretofore set forth, and in the final judgment in said action, which is to the great damage of your petitioner, your petitioner prays that your honor will examine the records of said supreme court of the State of Minnesota in this behalf and allow your petitioner a writ of error to the end that said judgment and record may be brought before the Supreme Court of the United States, agreeably to the laws of the United States in that behalf enacted.

W. W. CARGILL COMPANY, A CORPORATION, *Petitioner.*
KOON, WHELAN & BENNETT,
Attorneys for Petitioner.

Dated this 3rd day of August, A. D. 1899.

4 [Endorsed:] 11521. State of Minnesota, supreme court, April term, A. D. 1899. State of Minnesota *ex rel.* The R. R.

& Warehouse Commission, appellant, *vs.* W. W. Cargill Co., a corporation, respondent. Copy. Petition for writ of error. Koon, Whelan & Bennett, attorneys for petitioner.

Endorsed: Filed Aug. 5, 1899. D. F. Reese, clerk.

5 Supreme Court of the United States.

W. W. CARGILL COMPANY, a Corporation, Plaintiff in Error,
vs.
STATE OF MINNESOTA *ex Rel.* THE RAILROAD & WAREHOUSE Commission, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the action between The State of Minnesota *ex rel.* The Railroad & Warehouse Commission, plaintiff, appellant, *vs.* W. W. Cargill Company, a corporation, defendant, respondent, wherein was drawn in question the validity of a statute of and an authority exercised under said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the said decision was in favor of such their validity, and manifest error hath happened, to the great damage of the said defendant, respondent, as by its complaint appears, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the said W. W. Cargill Company, defendant, respondent, and to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,

6 with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3d day of August, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America —.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Allowed by—
CHAS. M. START,
Chief Justice of the Supreme Court
of the State of Minnesota.

[Seal of the Supreme Court, State of Minnesota.]

Endorsed.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I hereby certify that this writ of error was duly served this fifth day of August, 1899, and that a true copy thereof was delivered to and lodged with the undersigned clerk of said court on said day.

D. F. REESE,
Clerk of the Supreme Court of Minnesota,
By J. L. HELM, *Deputy.*

7 [Endorsed:] 11521. Supreme Court of the United States. W. W. Cargill Co., a corporation, plaintiff in error, *vs.* State of Minnesota *ex rel.* The R. R. & Warehouse Commission, defendant in error. Original. Writ of error. Due & personal service of within writ of error is admitted this 3d day of August, 1899. W. B. Douglas, att'y gen'l & att'y for def't in error. Ralph Whelan, att'y for pl'ff in error.

8 Supreme Court of the United States.

W. W. CARGILL COMPANY, a Corporation, Plaintiff in Error,
vs.
STATE OF MINNESOTA *ex Rel.* THE RAILROAD & WAREHOUSE Commission, Defendant in Error.

UNITED STATES OF AMERICA, ss:

The President of the United States to the State of Minnesota *ex rel.* The Railroad & Warehouse Commission, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, in an action wherein W. W. Cargill Company, a corporation, is plaintiff in error and State of Minnesota *ex rel.* The Railroad & Warehouse Commission is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to W. W. Cargill Company, a corporation, plaintiff in error, and to the parties aforesaid in that behalf.

Seal of the Supreme Court, State of Minnesota.

Witness the Hon. Charles M. Start, chief justice of the supreme court of the State of Minnesota, this 3d day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

CHAS. M. START,
Chief Justice of the Supreme Court, State of Minnesota.

9 Due and personal service of the above citation is hereby admitted on this 3rd day of August, A. D. 1899.

W. B. DOUGLAS,
Att'y Gen'l & Attorney for Defendant in Error.

Endorsed.

STATE OF MINNESOTA, *Supreme Court,* } ss:

I hereby certify that this citation was duly served this 5th day of August, 1899, and that a true copy thereof was delivered to and lodged with the undersigned clerk of said court on said day.

D. F. REESE,
Clerk of the Supreme Court of Minnesota,
By J. L. HELM, *Deputy.*

10 [Endorsed:] 11521. 3. Supreme Court of the United States. W. W. Cargill Co., a corporation, plaintiff in error, *vs.* State of Minnesota *ex rel.* The R. R. & Warehouse Commission, defendant in error. Original. Citation. E. Ralph Whelan, att'y for pl'ff in error.

11 Supreme Court of the United States.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD & WAREHOUSE COMMISSION, Appellant,
vs.
W. W. CARGILL COMPANY, a Corporation, Respondent.

W. W. CARGILL COMPANY, a Corporation, Plaintiff in Error,
vs.
STATE OF MINNESOTA *ex Rel.* THE RAILROAD & WAREHOUSE COMMISSION, Defendant in Error.

} Bond.

Know all men by these presents that we, S. D. Cargill and Charles M. Amsden, all of Minneapolis, Hennepin county, Minnesota, are held and firmly bound unto The State of Minnesota *ex rel.* The Railroad & Warehouse Commission, as defendant in error, in the sum of two thousand dollars ($2,000), to be paid to the said State of Minnesota *ex rel.* The Railroad & Warehouse Commission; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and dated this 3rd day of August, A. D. 1899.

Whereas the above-named plaintiff in error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Minnesota:

12 Now, therefore, the condition of this obligation is such that if the above-named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise remain in full force and effect.

S. D. CARGILL. [SEAL.]
CHARLES M. AMSDEN. [SEAL.]

Signed, sealed, and delivered in presence of—
E. S. MOOERS.
WILL. A. KOON.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

On this 3rd day of August, A. D. 1899, before me, a notary public within and for said county of Hennepin, personally appeared S. D. Cargill and Charles M. Amsden, each to me known to be the persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same as their free act and deed.

[NOTARIAL SEAL.] WILL. A. KOON,
Notary Public, Hennepin County, Minnesota.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

S. D. Cargill and Charles M. Amsden, being duly sworn, doth depose and say each for himself that he is worth the sum of four thousand dollars ($4,000) over and above all his just debts and liabilities in unencumbered property in the State of Minnesota subject to execution.

S. D. CARGILL.
CHARLES M. AMSDEN.

Subscribed and sworn to before me this 3rd day of August, A. D. 1899.

[NOTARIAL SEAL.] WILL. A. KOON,
Notary Public, Hennepin County, Minnesota.

13 [Endorsed:] 11521. Supreme Court of the United States. W. W. Cargill Company, a corporation, plaintiff in error, *vs.* State of Minnesota *ex rel.* The Railroad & Warehouse Commission, defendant in error. Bond. Due service of the within instrument by receipt of a copy thereof is hereby admitted this — day of August, A. D. 1899. —— ——, attorney general and att'y for defendant in error.

Endorsed: Filed Aug. 5, 1899. D. F. Reese, clerk. The within bond, with the sureties thereon, is hereby approved this 3rd day of Aug., A. D. 1899. Chas. M. Start, chief justice of the supreme court of Minnesota.

14 Supreme Court of the United States.

W. W. CARGILL COMPANY, a Corporation, Plaintiff in Error,
vs.
STATE OF MINNESOTA *ex Rel.* THE RAILROAD and Warehouse Commission, Defendant in Error.
} Assignment of Errors.

And now comes the said W. W. Cargill Company, a corporation, plaintiff in error, by Ralph Whelan, its attorney, and says that in the record and proceedings in the foregoing action in the supreme court of the State of Minnesota and in the final judgment entered therein there is manifest error in this:

1.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 was enacted in legitimate exercise by said State of Minnesota of its police power in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

2.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 conduces to any legitimate police purpose or has any relation whatever to or tendency to accomplish any matter or thing which is a proper or legitimate subject for police regulation in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to be subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

15 3.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 is not unreasonable, illegal, and void, and does not constitute an arbitrary, unwarranted, and unlawful interference with the right of a person to pursue a lawful business in handling his own sole property for his own sole purposes, in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to be subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

4.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, and is not illegal, unconstitutional, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

5.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property without due process of law, and is not illegal, unconstitutional, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

16 6.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, providing that no State shall make or enforce any law which shall abbridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws, and is not unconstitutional, illegal, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

7.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 is not repugnant to section two of article four of the Constitution of the United States, and is not illegal, unconstitutional, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Ware-

house Commission, and to require such owner to purchase a license therefor.

8.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 is not repugnant to that clause of section eight, article one, of the Constitution of the United States granting to Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," and is not unconstitutional, illegal and void in so far as said law attempts to declare elevators or warehouses in which only
17 the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

9.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 is not repugnant to that clause of section eight, article one, of the Constitution of the United States granting to Congress the power "to regulate commerce with foreign nations, and among the several States, and with Indian tribes," and is not unconstitutional, illegal, and void in so far as said law attempts to declare elevators or warehouses in which is received, stored, shipped, or handled only the grain of the owner solely purchased and placed in the same for the purpose of shipment and actually shipped from said elevators or warehouses beyond the boundaries of the State of Minnesota into the State of Wisconsin or the State of Illinois, or to other States, public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

10.

That said court erred in holding, under the conceded facts as appears by the record aforesaid, that a corporation or person solely engaged in purchasing grain in the State of Minnesota and receiving the same into his own private elevator or warehouse for the sole purpose of shipment and actually shipping the same from such elevator or warehouse to points beyond the boundaries of the State of Minnesota and into Wisconsin, Illinois, and other States should be compelled for a money consideration to procure a license from said State of Minnesota to engage in such business and to be subject to the rules and regulations of the State Railroad and Warehouse Commission, for the reason that such grain so purchased and shipped immediately upon its purchase becomes a subject of interstate commerce within the commerce clause of section eight,
18 article one, of the Constitution of the United States, and cannot be interfered with or acted upon under the provisions of

said chapter 148 of the General Laws of Minnesota for the Year 1895.

11.

That said court erred in holding that chapter 148 of the General Laws of Minnesota for the Year 1895 and the proceedings thereunder in this action, as appears by the record aforesaid, by which the said plaintiff in error has been by a final judgment in the highest court of the State of Minnesota in which a decision in said action could be had perpetually enjoined from further operating its said elevator or warehouse in receiving, shipping, storing, or handling its own wheat or other grain in the same until said plaintiff in error shall have become duly licensed therefor under said law by the State Railroad and Warehouse Commission, are not illegal, unconstitutional and void, and in violation of section one of article fourteen of the amendments of the Constitution of the United States, and of section two of article four of the Constitution of the United States, and of the commerce clause of section eight of article one of the Constitution of the United States, and of the fundamental principles of justice which underly the system of State and Federal Government in the United States.

12.

That said court errred in that by the record aforesaid it appears that the judgment aforesaid given was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff in error against the said defendant in error.

And the said W. W. Cargill Company, a corporation, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it, said W. W. Cargill Company, may be restored to all the things which it has lost by occasion of the said judgment, &c.

RALPH WHELAN,
Attorney for Plaintiff in Error.

19 [Endorsed:] 11521. Supreme Court of the United States. W. W. Cargill Company, a corporation, plaintiff in error, *vs.* State of Minnesota *ex rel.* The Railroad & Warehouse Commission, defendant in error. Copy. Assignment of errors.
Endorsed: Filed August 5, 1899. D. F. Reese, clerk. Ralph Whelan, attorney for plaintiff in error.

20 (Title of Cause.)

Assignment of Errors Made and Filed by Plaintiff and Appellant in the State Supreme Court.

The court erred in holding that Laws 1895, chapter 148, is unconstitutional and void, in so far as it attempts to declare warehouses and elevators in which only the grain of the owner is received, stored, shipped, or handled public elevators, and declaring such ele-

vators and warehouses to be under the supervision and subject to the inspection of the Railroad and Warehouse Commission, and in so far as it attempts to apply to such elevators and warehouses; said law, when so applied, does not constitute a proper or lawful exercise of the police power and is in conflict with and repugnant to section one, article fourteen, of the amendments to the Constitution of the United States, and to section seven, article one, of the constitution of the State of Minnesota.

21 STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify that the above and foregoing assignment of errors was made and filed by the plaintiff and appellant in the above-entitled action of State of Minnesota *ex rel.* The Railroad and Warehouse Commission, plaintiff, appellant, *vs.* W. W. Cargill Company, a corporation, defendant, respondent. Said assignment of errors was filed in said supreme court on the 30th day of November, 1898, in accordance with the rules and practice of said court, and became and constituted a part of the record upon which said cause was heard, tried, argued, submitted to, and determined by said court.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Minnesota, at the capitol, St. Paul, Minnesota, this 5th day of August, 1899.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of Supreme Court of Minnesota,
By J. L. HELM,
Deputy Clerk.

[Endorsed:] 11521. State *ex rel.* Railroad & Warehouse Commission, appellant, *vs.* W. W. Cargill Company, defendant. Assignment of errors, State supreme court.

Endorsed: Filed August 5, '99. D. F. Reese, clerk.

22 STATE OF MINNESOTA, *County of Fillmore,* } ss:

District Court, Tenth Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND Warehouse Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant. } Summons.

The State of Minnesota to the above-named defendant:

You and each of you are hereby summoned and required to answer the complaint of the plaintiff in the above-entitled action, a copy of which complaint is hereto annexed and herewith served upon you, and to serve a copy of your answer to said complaint on the under-

signed, at his office, in the capitol building in the city of St. Paul, in the county of Ramsey, State of Minnesota within twenty days after service; and if you fail to answer the said complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in said complaint.

Dated June 4, A. D. 1897.

H. W. CHILDS,
Attorney General, and
GEO. B. EDGERTON,
Attorneys for Plaintiff, Capitol Building, St. Paul, Minn.

23 STATE OF MINNESOTA, } ss:
County of Fillmore, }

District Court, Tenth Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND WAREHOUSE Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant.

Now comes the State of Minnesota, by the Railroad and Warehouse Commission thereof, *who* sues in behalf of said State, and shows to the court and alleges:

1. That the said Railroad and Warehouse Commission is composed of Ira B. Mills, George L. Becker, and Nathan Kingsley, who are, respectively, the duly appointed, qualified, and acting railroad and warehouse commissioners of said State; that A. T. Teisberg is the duly appointed, qualified, and acting secretary of said commission.

2. That the defendant is a corporation duly organized and existing under the laws of the State of Wisconsin; that for a period of more than sixty days last past the said defendant has owned, maintained, and operated and now owns, maintains, and operates a public country elevator in which wheat and other grains belonging to this defendant and other persons are received, stored, shipped, and handled; that the said elevator is situate upon the right of way of the Chicago, Milwaukee and St. Paul Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, in the village of Lanesboro and county of Fillmore, in this State, and upon the lands acquired and reserved by the said railroad company to be used in connection with its line of railway at its station and siding in the said village; that the said elevator
24 is used by the defendant in connection with the said railway at the said siding and station for the receiving and shipping of wheat and other grains transported over the lines of railway of the said railway company to and from the said village and is essential and necessary to the said railway company in order to promptly, safely, and properly handle grains received by it for shipment over its lines to and from the said village and effectively constitutes a necessary adjunct of the said railroad in such regard.

3. That the defendant has never applied to the said Railroad and

Warehouse Commission for a license to receive, ship, store, or handle any grain in said elevator and has never procured a license therefor from the said commission and is now operating the same without authority and in violation of the statute of this State for such case made and provided.

4. That the said village of Lanesboro is not a terminal point for the weighing, inspection, and handling of grain.

Wherefore the plaintiff demands judgment that the defendant be permanently restrained and enjoined from the further operation of the said elevator in receiving, shipping, storing, or handling of wheat or other grains in the same until it shall have become duly licensed therefor by the said Railroad and Warehouse Commission, and for its costs and disbursements.

H. W. CHILDS,
Attorney General, and
GEO. B. EDGERTON,
Attorneys for Plaintiff.

25 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Nathan Kingsley, being by me first duly sworn, deposes and says that he is a member of the Railroad and Warehouse Commission of the State of Minnesota; that he has read the foregoing complaint and knows the contents thereof, and that the same is true.

NATHAN KINGSLEY.

Subscribed and sworn to before me this second day of June, A. D. 1897.

ENOCH JOHNSON,
[SEAL.] *Notary Public, Ramsey County, Minn.*

26 STATE OF MINNESOTA *ex. Rel.* THE RAILROAD AND WAREHOUSE COMMISSION, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

R. C. Burdick, being duly sworn, deposes and says that at Lanesboro, Fillmore county and State of Minnesota, on the 7th day of June, 1897, he personally served the annexed summons and complaint upon the defendant named therein by delivering to and leaving with J. L. Parchman, the agent of the defendant at Lanesboro, a true copy of said summons and complaint; and deponent further says that he knew the person so served aforesaid to be the said J. L. Parchman, agent of said defendant.

R. C. BURDICK.

Subscribed and sworn to before me this 10th day of June, A. D. 1897.

ANDREW ERWIN,
[SEAL.] *Notary Public.*

Endorsed: Filed Nov. 30, 1897. Edward G. Rogers, clerk, by G. A. Limberg, deputy.

27 STATE OF MINNESOTA, }
County of Fillmore. }

District Court, Tenth Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND Warehouse Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant. } Answer.

And now comes the said defendant, by Koon, Whelan & Bennett, its attorneys, and unto the complaint herein of the said plaintiff makes answer:

1. Said defendant does admit that the said Railroad and Warehouse Commission is composed of the several persons in the complaint named, who are the duly appointed, qualified, and acting railroad and warehouse commissioners of said State, and that the person so named in the complaint is the duly appointed, qualified, and acting secretary of said commission; that said defendant is a corporation duly organized and existing under the laws of the State of Wisconsin; that said defendant is the owner of a certain warehouse or elevator situate upon the right of way of the Chicago, Milwaukee and St. Paul Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, in the village of Lanesboro and county of Fillmore, in said State, and upon the lands acquired and reserved by the said railroad company to be used in connection with its line of railway at its station and siding in said village; that said defendant has not applied to the said Railroad and Warehouse Commission for a license to receive, ship, store, or handle grain in said warehouse or elevator and has not procured a license therefor; that the said village of Lanesboro is not a terminal point for the weighing, inspection, and handling of grain.

2. Save as hereinbefore expressly admitted, said defendant does deny each and every allegation in said complaint contained.

28 Wherefore said defendant prays judgment that said action be dismissed and that said defendant go hence without day and recover its costs and disbursements herein.

KOON, WHELAN & BENNETT,
Attorneys for Defendant.

STATE OF WISCONSIN, }
County of La Crosse, } *ss:*

W. W. Cargill, being duly sworn, says that he is president of W. W. Cargill Company, defendant in the above-entitled action; that the foregoing answer is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

W. W. CARGILL.

Subscribed and sworn to before me this 8th day of July, A. D. 1897.

[NOTARIAL SEAL.] E. J. TULL,
Notary Public, La Crosse County, Wisconsin.

Due and personal service of the within answer, by a copy thereof, is hereby admitted this 9th day of July, A. D. 1897.

H. W. CHILDS.

Endorsed: Filed Sept. 15, 1898. Edward G. Rogers, clerk, by G. A. Limberg, deputy.

29 STATE OF MINNESOTA, } ss:
County of Fillmore. }

District Court, Tenth Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND Warehouse Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant. } Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled action that the place of trial thereof be changed from the county of Fillmore to the county of Ramsey, and the clerk of the district court in said first-named county is hereby authorized to forthwith transmit all the pleadings and papers now on file in his office in said action to the clerk of the district court of said Ramsey county, and said action may be placed on the calendar in the district court of said Ramsey county and brought on for trial at the option of the attorney general for any subsequent term to the December term, A. D. 1897, of said court upon ten days' notice of trial.

Dated Nov. 27, A. D. 1897.

H. W. CHILDS, *Attorney for Plaintiff.*
KOON, WHELAN & BENNETT,
Attorneys for Defendant.

Endorsed: Filed Nov. 30, 1898. Edward G. Rogers, clerk, by G. A. Limberg, deputy.

30 *Settled Case.*

STATE OF MINNESOTA, } ss:
County of Fillmore. }

District Court, Tenth Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD & WAREHOUSE Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant.

Pursuant to the stipulation and agreement of the parties in the above-entitled action for change of the place of trial thereof from

the said county of Fillmore to the county of Ramsey, said State, all the pleadings and papers on file in the office of the clerk of the district court of said Fillmore county were duly transmitted to the clerk of the district court of said Ramsey county, and there-
31 after said action was duly placed on the calendar of the district court of said Ramsey county for trial at the March, A. D. 1898, general term of said court, and came on for trial on the 8th day of March, A. D. 1898, before the Hon. George L. Bunn, one of the judges of said district court of Ramsey county, without a jury, whereupon the following proceedings were had:

The parties in the above-entitled action appearing by their respective counsel, agreed upon, filed, and made a part of the record of said case the following agreed statement of facts, which they mutually agreed should be and constitute all the evidence, admissions, and proofs upon which said action should be tried and submitted to the court, and which agreed statement of facts did in truth and fact constitute all the evidence, admissions, and proofs upon which said action was heard and determined and judgment therein made and entered by said court:

Agreed Statement of Facts.

And now come the said parties to the above-entitled action and hereby agree upon and state the facts under the issues raised by the pleadings in said action to be as follows:

1. That on April 16, 1895, and for more than one year prior thereto, said defendant, W. W. Cargill Company, was, ever since has been, and now is, a corporation duly organized and existing under the laws of and a citizen of the State of Wisconsin, United States of America.

2. That during all said time said defendant has been, and now is, engaged in the business of buying, selling, and dealing in grain, and has had, and now has, its principal office and place of business in the city of La Crosse, in said State of Wisconsin, and has owned and operated, and now owns and operates, large terminal grain elevators situated in said city of La Crosse and in the city of Green Bay, in said State of Wisconsin, and divers other grain ele-
32 vators and warehouses situated in other places in said State of Wisconsin.

3. That the village of Lanesboro, referred to in the complaint in said action, is a small village containing about eleven hundred inhabitants, situated in the county of Fillmore, State of Minnesota, upon the railway line of the Southern Minnesota division of the Chicago, Milwaukee & St. Paul Railway Company, distant about fifty-four miles west from and having by said line of railway direct railway connection with said city of La Crosse.

4. That considerable quantities of grain of different kinds are, and during all said time have been, annually raised in said county of Fillmore and marketed, sold, and delivered into divers local grain elevators and warehouses in said Lanesboro, and thence shipped away in cars over said line of railway, which, except wagons drawn

by animals, has been and is the only means and instrumentality for such shipment.

5. That on April 16th, 1895, and for more than one year prior thereto, said defendant owned, occupied, and operated, and continuously since said time has and does now own, occupy, and operate, one certain grain warehouse situated on the right of way of said railway company and near to the track of said line of railway in said village of Lanesboro.

6. That said warehouse is of one story in height, about thirty feet in width, and about one hundred fifteen feet in length, extending in an east and west direction along the south side of said track, and stands on a hillside; that the elevation of the ground on the north side of said warehouse, where said tracks are situated, is much lower than on the south side, where all grain is received into said warehouse.

7. That no machinery or mechanical appliances whatever for elevating or handling grain are, or ever have been, used or contained in said warehouse.

8. That all grain of every kind received into said warehouse has been during all said time and is hauled to the south side of said warehouse in bags on farm wagons, and thence there unloaded by hand by placing the bags of grain, one by one, upon small hand trucks at the entrance of said warehouse, and by conveying the bags on such trucks first to the weighing scale and thence to the
33 grain bins of such warehouse, seven in number, into which the grain is poured from the bags.

9. That all grain of every kind shipped from said warehouse has been during all said time and is spouted by force of gravity into box cars standing on said tracks on the lower side of said warehouse, and thence carried by said railway company over its said line of railway for said defendant and to such points as it, the defendant, may direct.

10. That now and during all the time said warehouse has been owned, occupied, and operated as aforesaid by said defendant each parcel or lot of grain of any kind or description received into or deposited or handled in or shipped from said warehouse is and has been fully and absolutely purchased by this defendant and is and has become before such parcel or lot is or has been received into or deposited or handled in said warehouse its own sole and absolute property.

11. That said defendant does not now and never during said time has received into or shipped from or handled or deposited or in any way stored in said warehouse any grain whatever in which any person or persons other than this defendant now has or has had any property, title, right, or interest whatever, or issued or offered to issue any warehouse receipt or storage ticket for any grain whatever there received or in any form carried on or offered or attempted to carry on in said warehouse the business of receiving, handling, storing, or shipping grain of or for any other person or persons, but that said warehouse now is and during all said time has been used, occupied, and operated by said defendant solely for the pur-

pose of receiving, handling, and shipping its own grain in its private capacity as grain owner and merchant.

12. That now and during all the time said warehouse has been owned, occupied, and operated as aforesaid by said defendant all grain of every kind and description received into or deposited or handled in or shipped from said warehouse is and has been purchased by the defendant, and all contracts of purchase of the same are and have been made and entered into by the defendant for the express purpose of acquiring, shipping, and transporting the same grain as the property solely of the defendant to its said terminal elevators in said cities of La Crosse and Green Bay or to the city of Milwaukee, in the State of Wisconsin, or to the city of Chi-
34 cago, in the State of Illinois, and thence to other points in divers States east of Lake Michigan and upon the Atlantic seaboard.

13. That all said grain is being and during all said time has been so received into or deposited or handled in said warehouse by the defendant for the express purpose of such shipment or transportation as the property solely of the defendant, and is being and has been actually shipped as the property of this defendant from said warehouse in car-load lots over said railway line, and directly and continuously transported by said railway company beyond the boundaries of Minnesota to said terminal elevators, cities, or points situated in said Wisconsin, Illinois, and divers States other than the State of Minnesota and to no other points or places.

14. That now and during all said time all said grain as fast as so received into said warehouse from the wagons is and has been directly and without any delay whatever spouted into box cars of said railway company for such shipment, or is and has been loaded into such cars severally containing different kinds or grades of grain separated from each other within the car by partitions as fast as sufficient grain for such a car-load is and has been accumulated in said warehouse or is and has been loaded out and so shipped as fast as a full car-load of grain of any one kind and grade is and has been received into said warehouse, and no grain received into or deposited in or shipped from said warehouse is or has been handled or shipped in any manner other or different from one or other of the modes aforesaid or kept in said warehouse longer or for any other purpose than as aforesaid.

15. That now and during all said time no grain of any kind or description received into or deposited or handled in or shipped from said warehouse is or has been bargained or sold or delivered to any person or firm or corporation doing business or resident in or a citizen of the State of Minnesota, or shipped or transported to or delivered at any city, village, town, point, or place within the boundaries of said State of Minnesota.

16. That now and during all the time that said warehouse has been owned, occupied, and operated by said defendant as aforesaid all grain of every kind and description received into or de-
35 posited or handled in or shipped from said warehouse is and has been grown in the State of Minnesota, and is and has

been sold and delivered to the defendant by and received into said warehouse from citizens or residents of or persons doing business in the State of Minnesota, the weights, grades, dockage, and inspection of all such grain being, and have always been, fixed by mutual agreement between such persons and this defendant, and without controversy in respect thereto and in no other manner and by no other person; that now and during all said time no weighing, grading, docking, or inspection of any kind or supervision or regulation thereof of any of said grain is or has been done or performed, or attempted or offered to be done or performed, in or about said warehouse on the receipt or shipment of any of said grain, or at any other place or time, by any person delegated or furnished by or acting for or under the authority of the State of Minnesota, or of any law thereof, or of the Railroad and Warehouse Commission of Minnesota, or any rule, regulation, officer, agent, or representative thereof, or by any person whatever in any capacity whatsoever.

17. And the parties to the above-entitled action do hereby further stipulate and agree that said plaintiff does and will make no claim of right to maintain said action, except under and by virtue of chapter 148 of the General Laws of the State of Minnesota for the Year 1895, which chapter is hereby made a part hereof.

18. And said parties do hereby further stipulate and agree that the foregoing agreed statement sets forth all the essential facts under the issues in this action, and shall be submitted to said court as the basis for its judgment therein.

Dated March 8, 1898.

H. W. CHILDS, *Attorney for Plaintiff.*
KOON, WHELAN & BENNETT,
Attorneys for Defendant.

And thereupon said hearing was continued until the 20th day of April, A. D. 1898.

Endorsed: Filed March 8, 1898. Edward G. Rogers, clerk, by G. A. Johnson, deputy.

36 STATE OF MINNESOTA, }
County of Fillmore. }

District Court, Tenth Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND WAREHOUSE Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant.

This cause came on for further hearing in the said district court of Ramsey county, said State, before Hon. Geo. L. Bunn, without a jury, at chambers, on the morning of Wednesday, April 20, 1898. Attorney General Childs appeared on behalf of plaintiff and Koon, Whelan & Bennett appeared for the defendant, whereupon the following proceedings were had:

Mr. WHELAN: And now comes the defendant and hereby moves

the court for the following findings of law and for judgment in its favor for the following reasons:

1. That the plaintiff by the evidence and agreed facts in this case has failed to establish against the defendant the cause of action alleged in the complaint or any cause of action whatever.

2. That the provisions of chapter 148 of the General Laws of Minnesota for the Year 1895 have no application to this case upon its facts, and that this case does not fall within the intent and purposes of those provisions or any of them.

3. That upon the facts in this case it appears that the defendant has not violated any of the provisions of chapter 148 of the General Laws of Minnesota for the Year 1895 or any of said provisions according to their intent and purpose.

4. That the provisions and each thereof of chapter 148 of the General Laws of Minnesota for the Year 1895 considered as applicable to the facts in this case were not enacted in the legitimate exercise by the State of its police power, do not conduce to any legitimate police purpose or constitute any police regulation in fact, have no relation whatever to or tendency to accomplish any
37 matter or thing which is a proper subject of police regulation, are unreasonable, and constitute an arbitrary and unwarranted interference with the right of a person to pursue a lawful business in handling his own sole property for his own sole purposes, and are unconstitutional, illegal, and void.

5. That the provisions and each thereof of chapter 148 of the General Laws of Minnesota for the Year 1895 considered as applicable to the facts of this case are repugnant to section two of article one of the constitution of the State of Minnesota, and are unconstitutional, illegal, and void.

6. That the provisions and each thereof of chapter 148 of the General Laws of Minnesota for the Year 1895 considered as applicable to the facts of this case are repugnant to section seven of article one of the constitution of Minnesota, and are unconstitutional, illegal, and void.

7. That the provisions and each thereof of chapter 148 of the General Laws of Minnesota for the Year 1895 considered as applicable to the facts of this case are repugnant to section one of article fourteen of the amendments of the Constitution of the United States, and are unconstitutional, illegal, and void.

8. That the provisions and each thereof of chapter 148 of the General Laws of Minnesota for the Year 1895 considered as applicable to the facts of this case are repugnant to section two of article four of the Constitution of the United States, and are unconstitutional, illegal, and void.

9. That the provisions and each thereof of chapter 148 of the General Laws of Minnesota for the Year 1895 considered as applicable to the facts of this case are repugnant to that clause of section eight of article one of the Constitution of the United States which gives to Congress the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes," and are unconstitutional, illegal, and void.

Attorney General CHILDS: And now comes the plaintiff and moves the court for judgment in accordance with the demand expressed in the complaint, viz: That the defendant be *pre*manently restrained and enjoined from the further operation of the said elevator in receiving, shipping, storing, or handling wheat or grains in the
38 same until it shall have become fully licensed therefor by the Railroad and Warehouse Commission of the State of Minnesota.

Case heard and submitted upon agreed statement of facts heretofore filed and made a part of the record herein.

Filed April 20, 1898.

EDWARD G. ROGERS, *Clerk*,
By G. A. LIMBERG, *Deputy*.

39 STATE OF MINNESOTA, }
County of Ramsey. }

District Court, Second Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND WAREHOUSE COMMISSION, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant.

In the above-entitled action, tried before the court without a jury, after hearing allegations, proofs, and admissions of the parties I make the following findings of fact and conclusions of law:

Findings of Fact.

1. The Railroad and Warehouse Commission, the relator in this action, is composed of Ira B. Mills, George L. Becker, and Nathan Kingsley, who are respectively the duly appointed, qualified, and acting railroad and warehouse commissioners of said State; A. T. Teisberg is the duly appointed, qualified, and acting secretary of said commission.

2. That on April 16, 1895, and for more than one year prior thereto, said defendant, W. W. Cargill Company, was, ever since has been, and now is, a corporation duly organized and existing under the laws of and a citizen of the State of Wisconsin, United States of America.

3. That during all said time said defendant has been and now is engaged in the business of buying, selling, and dealing in grain, and has had and now has its principal office and place of business in the city of La Crosse, in said State of Wisconsin, and has owned and operated and now owns and operates large terminal grain elevators situated in said city of La Crosse and in the city of Green Bay, in said State of Wisconsin, and divers other grain elevators and warehouses situated in other places in said State of Wisconsin.

4. That the village of Lanesboro, referred to in the com-
40 plaint in said action, is a small village containing about eleven hundred inhabitants, situated in the county of Fill-

more, State of Minnesota, upon the railway line of the Southern Minnesota division of the Chicago, Milwaukee & St. Paul Railway Company, distant about fifty-four miles west from and having, by said line of railway, direct railway connection with said city of La Crosse.

5. That considerable quantities of grain of different kinds are and during all said time have been annually raised in said county of Fillmore, and marketed, sold, and delivered into divers local grain elevators and warehouses in said Lanesboro, and thence shipped away in cars over said line of railway, which, except wagons drawn by animals, has been and is the only means or instrumentality for such shipment.

6. That on April 16, 1895, and for more than one year prior thereto, said defendant owned, occupied, and operated and continuously since said time has and does now own, occupy, and operate one certain grain warehouse situated on the right of way of said railway company, and near to the tracks of said line of railway in said village of Lanesboro.

7. That said warehouse is of one story in height, about thirty feet in width, and about 115 feet in length, extending in an east and west direction along the south side of said tracks, and stands on a hillside; that the elevation of the ground on the north side of said warehouse, where said tracks are situated, is much lower than on the south side, where all grain is received into said warehouse.

8. That no machinery or mechanical appliances whatever for elevating or handling grain are or ever have been used or contained in said warehouse.

9. That all grain of every kind received into said warehouse has been during all said time and is hauled to the south side of said warehouse in bags on farm wagons, and thence there unloaded by hand by placing the bags of grain, one by one, upon small hand trucks at the entrance of said warehouse, and by conveying the bags on such trucks first to the weighing scale and thence to the grain bins of such warehouse, seven in number, into which the grain is poured from the bags.

10. That all grain of every kind shipped from said ware-
41 house has been during all said time and is spouted by force of gravity into box cars standing on said tracks on the lower side of said warehouse, and thence carried by said railway company over its said line of railway for said defendant, and to such points as it, the defendant, may direct.

11. That now and during all the time said warehouse has been owned, occupied, and operated as aforesaid by said defendant each parcel or lot of grain of any kind or description received into or deposited or handled in or shipped from said warehouse is and has been fully and absolutely purchased by this defendant, and is and has become before such parcel or lot is or has been received into or deposited or handled in said warehouse its own sole and absolute property.

12. That said defendant does not now and never during said time has received into or shipped from or handled or deposited or

in any ways stored in said warehouse any grain whatever in which any person or persons other than this defendant now has or has had any property, title, right, or interest whatever, or issued or offered to issue any warehouse receipt or storage ticket for any grain whatever there received, or in any form carried on or offered or attempted to carry on in said warehouse the business of receiving, handling, storing, or shipping grain of or for any other person or persons, but that said warehouse now is and during all said time has been used, occupied, and operated by said defendant solely for the purpose of receiving, handling, and shipping its own grain in its private capacity as grain owner and merchant.

13. That now and during all the time said warehouse has been owned, occupied, and operated as aforesaid by said defendant all grain of every kind and description received into or deposited or handled in or shipped from said warehouse is and has been purchased by the defendant, and all contracts of purchase of the same are and have been made and entered into by the defendant for the express purpose of acquiring, shipping, and transporting the same grain as the property solely of the defendant to its said terminal elevators in said cities of La Crosse and Green Bay or to the city of Milwaukee, in the State of Wisconsin, or to the city of Chi-
42 cago, in the State of Illinois, and thence to other points in divers States of Lake Michigan and upon the Atlantic seaboard.

14. That all said grain is being and during all said time has been so received into or deposited or handled in said warehouse by the defendant for the express purpose of such shipment or transportation as the property solely of the defendant, and is being and has been actually shipped as the property of this defendant from said warehouse in car-load lots over said railway line, and directly and continuously transported by said railway company beyond the boundaries of Minnesota to said terminal elevators, cities, or points situated in said Wisconsin, Illinois, and divers States other than the State of Minnesota and to no other points or places.

15. That now and during all said time all said grain as fast as so received into said warehouse from the wagons is and has been directly and without any delay whatever spouted into box cars of said railway company for such shipment, or is and has been loaded into such cars severally containing different kinds or grades of grain separated from each other within the car by partitions as fast as sufficient grain for such a car-load is and has been accumulated in said warehouse, or is and has been loaded out and so shipped as fast as a full car-load of grain of any one kind and grade is and has been received into said warehouse, and no grain received into or deposited in or shipped from said warehouse is or has been handled or shipped in any manner other or different from one or other of the modes aforesaid or kept in said warehouse longer or for any other purpose than as aforesaid.

16. That now and during all said time no grain of any kind or description received into or deposited or handled in or shipped from said warehouse is or has been bargained or sold or delivered to any

person or firm or corporation doing business or resident in or a citizen of the State of Minnesota, or shipped or transported to or delivered at any city, village, town, point, or place within the boundaries of said State of Minnesota.

17. That now and during all the time that said warehouse has been owned, occupied, and operated by said defendant as
43 aforesaid all grain of every kind and description received into or deposited or handled in or shipped from said warehouse is and has been grown in the State of Minnesota and is and has been sold and delivered to the defendant by and received into said warehouse from citizens and residents of or persons doing business in the State of Minnesota, the weights, grades, dockage, and inspection of all such grain being and having always been fixed by mutual agreement between such persons and this defendant and without controversy in respect thereto and in no other manner and by no other persons; that now and during all said time no weighing, grading, docking, or inspection of any kind or supervision or regulation thereof of any of said grain is or has been done or performed or attempted or offered to be done or performed in or about said warehouse on the receipt or shipment of any of said grain or at any other place or time by any person delegated or furnished by or acting for or under the authority of the State of Minnesota or of any law thereof or of the Railroad and Warehouse Commission of Minnesota or any rule, regulation, officer, agent, or representative thereof or by any person whatever in any capacity whatsoever.

18. That defendant has never applied to the said Railroad and Warehouse Commission for license to receive, ship, store, or handle any grain in said elevator and has never procured a license therefor from said commission.

19. The parties to this action have stipulated and agreed that plaintiff does and will make no claim of right to maintain this action except under and by virtue of chapter 148 of the General Laws of the State of Minnesota for the Year 1895.

Conclusions of Law.

Laws 1895, chapter 148, by its terms applies to elevators and warehouses in which only the grain of the owner is received, stored, shipped, or handled as well as the elevators and warehouses in which grain of the public is received, stored, shipped, or handled for hire.

Laws 1895, chapter 148, construed as above, is unconstitutional and void in so far as it attempts to declare warehouses and elevators in which only the grain of the owner is received, stored, shipped, or handled public elevators, and declaring such elevators and
44 warehouses to be under the supervision and subject to the inspection of the Railroad and Warehouse Commission, and in so far as it attempts to apply to such elevators and warehouses. Said law when so applied does not constitute a proper or lawful exercise of the police power and is in conflict with and repugnant to section one, article fourteen, of the amendments to the Constitu-

tion of the United States and to section seven, article one, of the constitution of the State of Minnesota.

Laws 1895, chapter 148, except as it applies or purports to apply to elevators and warehouses in which the grain of the owner only is received, stored, shipped, or handled, is constitutional and valid, being a proper and lawful exercise of the police power of the State.

The plaintiff has failed to establish against the defendant any cause of action, and defendant is entitled to judgment that plaintiff take nothing and have no relief in this action, and that defendant recover its costs and disbursements herein.

Let judgment be entered accordingly.

GEORGE L. BUNN,
District Judge.

June 2, 1898.

45 *Memorandum.*

1. Under the familiar rule that where one construction of a statute will make it void for conflict with the constitution and another will render it valid, the latter construction, if not a forced and unreasonable one, will be adopted; although the former at first view is otherwise the more natural interpretation of the language used, it might be possible to construe the language of section one of this act as only applicable to elevators and warehouses "in which grain is received, stored, shipped, or handled" for others. The omission of the words "for others" or "for hire" or "for profit," or words indicating a public interest in the business, usually contained in similar laws, would seem, however, to indicate the intention of the legislature that purely private elevators and warehouses, storing only grain belonging to the warehousemen. were to be subject to the provisions of the laws as well as those storing grain for others for hire. However, if it were necessary to adopt the other construction in order to sustain the validity of the law, it may be that a consideration of the purposes of the legislature and the language of the other sections of the act would warrant a court in so doing. But as I think it clear that the law is valid as applied to all elevators and warehouses, except purely private ones, and as I regard the other the more natural interpretation of the language used, I do not think it necessary in order to save the law to adopt the construction that makes it applicable only to elevators and warehouses that receive or store grain for others. It is in fact applicable only to them, and the law is valid to that extent. A strained or forced construction is therefore unnecessary, as the law is operative without it to the same extent as it would be were the forced construction adopted.

2. I am unable to escape the conclusion that the law is unconstitutional in so far as it applies to elevators and warehouses that do not receive, store, or handle any grain for others and have never done so, as it appears from the findings and the stipulated facts in the case with the defendant's warehouse.

46 The right of the State in the exercise of its police power to regulate the business of receiving, weighing, inspecting,

and storing grain for others in elevators or warehouses as being a business affected with a public interest is now settled beyond all controversy.

Rippe *vs.* Becker, 56 Minn., 100.
Munn *vs.* Illinois, 94 U. S., 113.
Budd *vs.* New York, 143 U. S., 517.
Brass *vs.* Stoesser, 153 U. S., 391.

But unless the business is "affected with a public interest" the State has no right to interfere, and it is the storing for others that creates and constitutes the public interest which alone authorizes and warrants interference and regulations by the public—that is, by the State.

This principle is the foundation on which the decisions in the above cases rest. I am not aware that it has ever been held that the character of the product stored or handled is the test of whether a "public interest" is affected. It is not the character of the commodity stored, but the fact that the handling or storing is done for others, for the public, for a compensation paid by the public, that creates the public interest. A man may own and operate a ferry for his own use or for the use of his family and not for the use of the public without being subject to State regulations, but as soon as he operates the ferry for the public for pay it becomes a business "affected with a public interest" and subject to regulation by the public (Munn *vs.* Illinois and authorities cited). So it seems to me that a man may own and use his house, cellar, store, or warehouse for storing, selling, and handling his own property without being subject to State regulation, but when he stores the property of others for pay his business becomes "affected with a public interest" and subject to State regulation.

47 In Brass *vs.* Stoesser the Supreme Court of the United States extended to its full limit the doctrine of the right of a State to regulate a private business affected with a public interest, but the court sustained the law of North Dakota as applied to the facts in that case on the ground that, although Brass used his elevator chiefly to store his own grain, yet he had stored grain for others when there was room in his elevator. The court held that this was sufficient to create the "public interest" and to bring his elevator within the operation of the law. Mr. Justice Shiras, in the majority opinion, indicates clearly enough that had the law applied to warehouses built and used by the owner to store only his own grain, or had Brass built and used his elevator for that purpose only, the decision would have been different.

In Stewart *vs.* Great Northern R'y Co., 65 Minn., 515, our supreme court recognizes the difference between a "public elevator," one in which grain is received, stored, and handled for the public for hire, and a "private elevator," or one used exclusively as an instrumentality in the owner's private business, and concedes that if the court were compelled to construe the language of the Laws 1893,

sec. 64, as attempting to give the right of eminent domain to secure a site to elevators or warehouses erected and operated for the "purchase, sale, and shipment" of the owner's grain only or for the "storage of grain for the public, for hire," the act would be unconstitutional as authorizing the right to exercise the power of eminent domain for a private use. The act declared all warehouses and elevators erected and maintained under the provisions thereof to be public and subject to legislative control, and yet this declaration is considered by the court as an additional reason for its construction of the words "for the purchase, sale, shipment, or storage of grain for the public for hire" and not as in itself operating to make private elevators public or to bring them under legislative control. If, indeed, a declaration to this effect was valid or operative, it would have been of itself sufficient to render the grant of the
48 power of eminent domain valid as for a public use.

3. The law under consideration applies only to elevators and warehouses situated on the right of way of any railroad or on depot grounds or lands acquired or reserved by a railroad company to be used in connection with its line of railway at any station or siding in the State other than at terminal points. The plaintiff contends that the fact that an elevator is situated upon the right of way of a railway company gives the State the right to declare it a public elevator and to require a license for its operation, even though it is not and has never been used or operated for the handling or storage of grain for others. In other words, the argument is that the location of the elevator on the right of way of a railroad company makes the elevator so much a part of the system of transportation of grain by rail or makes it so intimately connected with the railroad itself that a "public interest" is created sufficient to authorize State regulation.

I am unable to see how the mere fact that the elevator is situated on the right of way creates this public interest. May not a railroad company permit a shipper to erect on its right of way or depot grounds a warehouse or other structure for the temporary storage of the shipper's own goods without making the shipper's business one affected with a public interest so as to authorize regulation of it by the State? Elevators, warehouses, freight-houses, and other structures operated by the railroad company for the use of the public or operated by private owners for the use of the public are undoubtedly subject to legislative regulation and control, whether situated on the right of way or not, but a purely private warehouse or storehouse built and operated for the use of the owner only is not affected with a public interest and is not subject to legislative regulation simply because it happens to be located upon the right of way or depot grounds of a railroad company.
49 4. The law of 1895, therefore, is unconstitutional as applied to the facts in this case. But it is, in my opinion, constitutional and valid when applied to other states of facts. If an elevator or warehouse is, or has ever been, used for the storage of grain for others, for hire, even though its principal business is the hand-

ling or storing of the owner's grain, the law is operative and valid as to such elevator or warehouse.

Brass *vs.* Stoesser, 153 U. S., 391.
Meyer *vs.* Berlandi, 39 Minn., 438.
O'Brien *vs.* Krenz, 36 Minn., 136.
Smith *vs.* Ames, 10 U. S. advance sheets, L. C. R. Co., 438.
Nebraska Rate Case, U. S. Supreme Court.

BUNN, *J.*

Endorsed: Filed June 3, 1898. Edward G. Rogers, clerk, by G. A. Limberg, deputy.

50 STATE OF MINNESOTA, *County of Ramsey,* } ss:

District Court, Second Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND Warehouse Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant. } Stipulation.

It is hereby mutually stipulated and agreed by and between the respective parties to the above-entitled action that judgment may be entered therein forthwith upon the filing of this stipulation in favor of said defendant upon the order of said court heretofore filed in said action on the 3rd day of June, A. D. 1898, costs and disbursements in said action being hereby expressly waived.

Dated Aug. 3, A. D. 1898.

H. W. CHILDS, *Attorney for Plaintiff.*
KOON, WHELAN & BENNETT,
Attorneys for Defendant.

Endorsed: Filed Aug. 12, 1898. Edward G. Rogers, clerk, by G. A. Limberg, deputy.

51 The foregoing case, hereto attached, having been found conformable to the truth, is hereby settled and allowed as a case in said action, and it is hereby ordered to be made a part of the record therein, and I hereby certify that the within settled and allowed case contains all the evidence, admissions, and proofs offered or received and all the proceedings had in the above-entitled action and at the trial thereof.

By the court:

GEORGE L. BUNN, *Judge.*

52 STATE OF MINNESOTA, } ss:
County of Ramsey, }

District Court, Second Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND Warehouse Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant. } Judgment.

This cause being regularly upon the calendar of the above-named court for the March, A. D. 1898, general term thereof, came on for trial on the 8th day of March, A. D. 1898, before his honor George L. Bunn, one of the judges of said court, without a jury, on which day, after the introduction of all the evidence by said parties, said trial was adjourned until April 20th, A. D. 1898, on which last-named day the trial was resumed and the arguments of counsel for the respective parties duly heard, and the court, after hearing the evidence adduced at said trial, the arguments of counsel, and being fully advised in the premises, did on the 3rd day of June, A. D. 1898, duly make and file its findings of fact, conclusions of law, and order for judgment herein.

Now, pursuant to said order and the stipulation of said parties waiving costs herein, and on motion of Messrs. Koon, Whelan & Bennett, attorneys for the defendant, it is hereby adjudged and decreed that chapter one hundred and forty-eight (148) of the General Laws of Minnesota for the Year 1895 by its terms applies to elevators and warehouses in which only the grain of the owner is received, stored, shipped, or handled, as well as to elevators and warehouses in which grain of the public is received, stored, shipped, or handled for hire.

That chapter one hundred and forty-eight (148) of the General Laws of the State of Minnesota for the Year 1895, construed as above, is unconstitutional and void in so far as it attempts
53 to declare warehouses and elevators in which only the grain of the owner is received, stored, shipped, or handled public elevators, and declaring such elevators and warehouses to be under the supervision and subject to the inspection of the Railroad and Warehouse Commission, and in so far as it attempts to apply to such elevators and warehouses; said law, when so applied, does not constitute a proper or lawful exercise of the police power and is in conflict with and repugnant to section one (1) of article fourteen (14) of the amendments to the Constitution of the United States, and to section seven (7) of article one (1) of the constitution of the State of Minnesota.

That chapter one hundred and forty-eight (148) of the General Laws of Minnesota for the Year 1895, except as it applies or purports to apply to elevators and warehouses in which the grain of the owner only is received, stored, shipped, or handled, is constitutional and valid, being a proper and lawful exercise of the police power of the State.

It is further adjudged and decreed, that plaintiff has failed to es-

tablish against the defendant any cause of action, and that plaintiff take nothing and have no relief in this action.

Dated Aug. 10, A. D. 1898.

Judgment entered August 12th, 1898.

EDWARD G. ROGERS,
Clerk of Court.

Form approved Aug. 12, 1898.

BUNN, *J.*

Endorsed: Filed Aug. 12, 1898. Edward G. Rogers, clerk, by G. A. Limberg, deputy.

54 STATE OF MINNESOTA, }
County of Ramsey. }

District Court, Second Judicial District.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD and Warehouse Commission, Plaintiff,
vs.
W. W. CARGILL COMPANY, a Corporation, Defendant.
} Notice of Appeal.

To Koon, Whelan & Bennett, attorneys for the above-named defendant, and to Hon. E. G. Rogers, clerk of said district court:

Please take notice that the above-named plaintiff hereby appeals to the supreme court of the State of Minnesota from the judgment of the said district court entered herein on the 12th day of August, A. D. 1898, and from the whole thereof.

Dated this 28th day of December, A. D. 1898.

H. W. CHILDS,
Attorney for Plaintiff.

Due and personal service of the within notice of appeal by copy thereof is hereby admitted on this 28th day of December, A. D. 1898.

KOON, WHELAN & BENNETT,
Attorneys for Defendant.
EDWARD G. ROGERS,
Clerk of the District Court.

Endorsed: Filed Dec. 28th, 1898. Edward G. Rogers, clerk, by G. A. Limberg, deputy.

55 STATE OF MINNESOTA, }
County of Ramsey. }

Second Judicial District.

I, Edward G. Rogers, clerk of the district court, Ramsey county and State of Minnesota, do hereby certify and return to the honorable the supreme court of said State that I have compared the foregoing paper-writing with the original summons, complaint, answer,

stipulation, settled case, judgment, and notice of appeal, stipulation referred to being the one for change of venue from Fillmore to Ramsey county, in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original and the whole thereof.

Witness my hand and seal of said court, at St. Paul, this twenty-ninth day of December, A. D. 1898.

[SEAL.] EDWARD G. ROGERS, *Clerk*,
By ARTHUR J. STODDARD,
Deputy Clerk.

[Revenue stamp.]

56 [Endorsed:] 11521. State of Minnesota *ex rel.* The Railroad and Warehouse Commission, plaintiff, *vs.* W. W. Cargill Company, a corporation, defendant. Return. H. V. Childs and Geo. B. Edgerton, attorneys for plaintiff. Koon, Whelan & Bennett, attorneys for def't. Return to supreme court, State of Minn.
Endorsed: Filed Dec. 29, 1898. D. F. Reese, clerk.

57 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD and Warehouse Commission, Appellant,
vs.
W. W. CARGILL COMPANY, a Corporation, Respondent.
} No. 22. Syllabus.

The defendant operates a grain warehouse in a village in this State, in which no grain is stored but defendant's own, which it purchases of the farmers at the warehouse where the grain is so delivered and where it is weighed and graded by defendant on its own scales and with its own appliances. Held, the business so carried on is of such a public character and sufficiently affected with a public interest that the legislature may require persons operating such warehouse to take out a license therefor as provided in chapter 148, Gen. Laws 1895.

58 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD & Warehouse Commission, Appellant,
vs.
W. W. CARGILL COMPANY, a Corporation, Respondent.
} No. 22. Opinion.

Since April, 1894, the defendant has been operating a warehouse at Lanesboro, Minn., used by it for storing grain therein, but has never obtained from the State Railroad and Warehouse Commission, pursuant to chapter 148, Gen. Laws 1895, a license authorizing it to ship, store, or handle grain in such warehouse; and this is an action

brought to enjoin defendant from so operating the same without a license. On the trial the court found for defendant, and plaintiff appeals from the judgment entered accordingly.

The defendant has never stored in this elevator any grain except its own, which it had bought of the farmers at the warehouse, and which was raised in this State, presumably in the vicinity of Lanesboro. The court below held that, as applied to such a case, said chapter 148 is unconstitutional; that this is a private warehouse, in which no grain was ever stored for others or for the public, and that therefore it was not affected with a public interest, and the State had no right to interfere or regulate the manner of its use. This is also the position taken by respondent. If the business carried on at this warehouse consisted of nothing more than storing defendant's own grain we would concede that such business would warrant but little interference or regulation of it by the State; but that business does consist of something more. It was conceded on the argument, and is fairly to be inferred from the findings
59 and stipulation of facts, that the grain is purchased, weighed, graded, and delivered at the warehouse, and that defendant, with its own scales and appliances, weighs and grades the grain. Under these circumstances the warehouse is a sort of public market place, where the farmers come with their grain for the purpose of selling the same, and where the purchaser, a party in interest, acts as marketmaster, weighmaster, inspector, and grader of the grain. Surely such a business is of a public character and is sufficiently affected with a public interest to warrant a very considerable amount of regulation of it by the State. The business carried on by defendant at its warehouse is similar to that carried on at a large number of other warehouses and elevators in this State. The grain crops of this State constitute by far the most important part of its commerce and its greatest resource. It is important to see that correct weights are had; that uniform grades are given; that the proper amount of dockage and no more is taken; that no dishonest practices are allowed and no undue advantage is permitted to be taken. Said chapter 148 requires the person operating such an elevator or warehouse to procure a license to be issued by the State Railroad and Warehouse Commission, for which a fee of one dollar per year must be paid. The act also provides that such license may be revoked by the commission if the warehouse or elevator is operated in violation or in disregard of the laws of this State. Section 2 provides that any person attempting to run such an elevator or warehouse without a license may be enjoined in a suit for that purpose. Section 3 provides that the commission may make suitable and necessary rules and regulations for the government of public country warehouses and elevators. Then follow other provisions. There are undoubtedly many provisions in the act which apply only to warehouses and elevators in which grain is stored for others or for the public, and which provisions do not and cannot apply to such warehouses as the one here in question. There are, perhaps, provisions in the act which it would be unconstitutional to apply to such

a warehouse as this; but these matters need not be considered
60 at this time. The provision requiring a license is not one of these. This disposes of the only question argued which it is necessary to consider. Judgment reversed and a new trial granted.

CANTY, *J.*

61 In view of the facts, among others, that grain is the principal agricultural product of the State, that in the purchase and sale of it there is great liability to abuses in the matter of weights and grades, and that these are usually determined by the purchaser with his own instrumentalities, I agree with the court that although the owner of a warehouse uses it exclusively for the storage of his own grain, yet if he uses it for the purpose of buying grain from the public, thus rendering it, in effect, a public market, his business is a proper subject of police regulation by the State to the extent of providing such rules and regulations as are reasonably necessary to secure to the public just and correct weights and grades. The requirement of a license may be a reasonable regulation in such cases as a means of enabling State officials to ascertain who are engaged in the business. In my opinion this is the extent of the police power of the State in such cases. But in the act in question (Gen. Laws 1895, c. 148) the legislature have not proceeded on any such principle. They have declared all elevators and warehouses falling within the purview of the act, whether used for the storage of grain for others or not, to be public elevators and subject to all the provisions of the act. These provisions constitute a system of rules and regulations the different parts of which are so connected with and dependent upon each other that it is in many instances impossible to separate them. Many of them are wholly inapplicable to warehouses not used for the storage of grain for others. The opinion of the court concedes this. Some of them are, in my judgment, clearly not within the police power of the State as applied to warehouses not used for the storage of grain for others. As illustrating that the system of rules and regulations contained in the act was intended as a unit, applicable to all warehouses within the purview of the act, the fourth section, as I construe it, makes it compulsory on the owner of any such warehouse to engage in the business of storing grain for others, a thing which is not within the police power of the State, unless the
fact that the warehouse happens to be situated on land ac-
62 quired by a railway company for right of way or for railway purposes in connection with one of its stations or sidings gives the State that power—a question not considered by the court. As I understand the opinion of the majority, they propose to cut down the application of the act to warehouses not used for the storage of grain for others than the owner to such parts of the act as are applicable and appropriate to such business and to that extent hold it valid. In view of the connection and interdependency of the different provisions of the act, this will be a difficult if not an impossible thing to do. It would be a most unreasonable task to impose upon every owner of a warehouse used exclusively for the

storage of his own grain bought from the public to determine what provisions or parts of provisions are applicable to his business. He can only know this with any certainty after the courts have, by a gradual process of exclusion and inclusion, decided all doubtful questions on the subject. It is possible that upon other points not raised or presented a different result might be arrived at, but considering the case exclusively upon the lines followed by the majority of the court, I am of the opinion that the whole act should be held invalid as to warehouses not used for the storage of grain for others and let the legislature hereafter pass an act containing provisions appropriate to that class of warehouses. The fact that the act applies only to elevators and warehouses on railroad rights of way, depot grounds, or land acquired by a railroad company for railroad purposes at one of its stations or sidings may suggest the question whether it is "class legislation," but, as no such point has been raised, I have not considered it.

MITCHELL, *J.*

[Endorsed:] Syllabus and opinion.

63 [Endorsed:] No. 11521. State of Minnesota, supreme court. State *ex rel.* Railroad & Warehouse Commission, appellant, *vs.* W. W. Cargill, respondent. Copy of opinion and syllabus. Endorsed: Filed July 3, 1899. D. F. Reese, clerk. April term, A. D. 1899. Canty, J.

64 April Term, A. D. 1899.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND WAREHOUSE COMMISSION, Appellant,
vs.
W. W. CARGILL COMPANY, a Corporation, Respondent. } No. 22.

Pursuant to an order of court duly made and entered in this cause on the twenty-fifth day of July, A. D. 1889—

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the second judicial district, sitting within and for the county of Ramsey, be, and the same hereby is, in all things reversed and a new trial granted; and it is further determined and adjudged that the appellant above named do have and recover of said W. W. Cargill Company, a corporation, respondent herein, the sum and amount of ninety-four dollars ($94.00), costs and disbursements in this cause in this court, and that said appellant have execution for the enforcement thereof.

Dated and signed this 25th day of July, 1899.

By the court.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	
Clerk's fees for making return	
Printer's fees	$84.00
Clerk's fees supreme court	10.00
Filing mandate	
Affidavits and acknowledgments	
Postage	
	$94.00

65 [Endorsed:] 11521. State of Minnesota, supreme court. State *ex rel.* R. R. and Warehouse Commission, appellant, *vs.* W. W. Cargill Co., respondent. Transcript of judgment.
Endorsed: Filed July 25, A. D. 1899. D. F. Reese, clerk. ——
——, attorney for —. Page No. 49, "X" Book.

STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 25th day of July, A. D. 1899.

D. F. REESE, *Clerk.*

66 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

STATE *ex Rel.* R. R. AND WAREHOUSE Commission, Appellant, *vs.* W. W. CARGILL CO., Respondent.	No. 22. Appeal from District Court Second Judicial District, County of Ramsey.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1899, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be, and the same hereby is, in all things reversed and a new trial granted, and that the appellant above named have judgment accordingly.

Entered July 25, A. D. 1899.
By the court.
Attest:

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.
Attest: D. F. REESE, *Clerk*.

[Endorsed:] No. 11521. State of Minnesota, supreme court. Copy of order for judgment.
Endorsed: Filed July 25, A. D. 1899. D. F. Reese, clerk.

67 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1899.

TUESDAY MORNING, 9.30 O'CLOCK, *June* 20, *A. D.* 1899.

Court convened pursuant to adjournment, all the justices being present.

STATE *ex Rel.* R. R. AND WAREHOUSE Commission, Appellant, *vs.* W. W. CARGILL CO., Respondent. } Cal. No., 22; Reg. No., 11521.

This cause came on to be heard this day upon the return to the appeal herein.
Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.
A true record.
[Seal of the Supreme Court, State of Minnesota.]
Attest: D. F. REESE, *Clerk*.

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.
Attest: D. F. REESE, *Clerk*.

[Endorsed:] 11521. State of Minnesota, supreme court. Copy of minutes of argument.
Endorsed: Filed July 25, A. D. 1899. D. F. Reese, clerk.

68 [Endorsed:] No. 11521. State of Minnesota, supreme court. State *ex rel.* R. R. and Warehouse Com., appellant, against W. W. Cargill Co., respondent. Judgment-roll.
Endorsed: Filed July 25, 1899. D. F. Reese, clerk.

69 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND Warehouse Commission, Appellant, *vs.* W. W. CARGILL COMPANY, a Corporation, Respondent. } Stipulation.

It is by and between the parties to the above-entitled action hereby stipulated and agreed that there are no facts, evidence, or proofs that can be offered or introduced by either of said parties upon a new trial of said action in the district court of Ramsey

county other than, different from, or in addition to those contained in the record and return in said action in this court, and that as no remittitur in said action has been filed in the said district court of Ramsey county, this court may make such further order or judgment in said action as to the court shall seem meet and proper.

Dated St. Paul, Minn., July 31st, A. D. 1899.

W. B. DOUGLAS,
Attorney General, Attorney for Appellant.
KOON, WHELAN & BENNETT,
Attorneys for Respondent.

70 [Endorsed:] 11521. State of Minnesota, Supreme court, April term, A. D. 1899. State of Minnesota *ex rel. vs.* W. W. Cargill Co. Stipulation.

Endorsed: Filed Aug. 2, 1899. D. F. Reese, clerk.

71 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND WAREHOUSE COMMISSION, Appellant,
vs.
W. W. CARGILL COMPANY, a Corporation, Respondent. } Order.

It having been made to appear to the court that there are no facts, evidence, or proofs that can be offered or introduced in evidence by either of said parties upon a new trial of said action in the district court of Ramsey county, from which said appeal was taken, other than, different from, or in addition to those contained in the record and return in said action on file in this court, and that the findings of fact upon a new trial of said action would be the same as those already contained in the record and return thereof now on file in this court, and upon which an order and judgment of this court heretofore entered was made:

Now, upon motion of Hon. W. B. Douglas, attorney general—

It is hereby ordered that the order and judgment heretofore entered by this court in the above-entitled action be, and the same hereby is, annulled and set aside, and the judgment of the district court of Ramsey county be, & the same is hereby, in all things reversed.

Ordered, further, that a final judgment in favor of the appellant, The State of Minnesota *ex rel.* The Railroad & Warehouse Commission, be made and entered in said action, adjudging unto said appellant the full relief demanded in its complaint, together with costs and disbursements.

Ordered, further, that a duly certified copy of such final
72 judgment, when so made and entered, be remitted to the district court of Ramsey county of said State, to be there entered and stand in said court as the final judgment in said action.

By the court:

CHAS. M. START,
Chief Justice.

Dated August 1st, A. D. 1899.

73 [Endorsed:] 11521. (Copy.) State of Minnesota, supreme court, April term, A. D. 1899. State of Minnesota *ex rel.* The Railroad & Warehouse Commission, appellant, *vs.* W. W. Cargill Company, a corporation, respondent. Copy of order.
Endorsed: Filed August 2, 1899. D. F. Reese, clerk.

74 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

STATE OF MINNESOTA *ex Rel.* THE RAILROAD AND Warehouse Commission, Appellant,
vs.
W. W. CARGILL COMPANY, a Corporation, Respondent. } Judgment.

Pursuant to an order of court duly made and entered in this cause on the 1st day of August, A. D. 1899—

It is here and hereby determined and adjudged that the judgment of this court in this cause heretofore and on the 25th day of July, A. D. 1899, made and entered be, and the same hereby is, in all things annulled and set aside.

And it is further determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the second judicial district, sitting within and for the county of Ramsey, be, and the same hereby is, in all things reversed.

And it is further determined and adjudged that the said W. W. Cargill Company, respondent above named (defendant in the court below), be, and hereby is, perpetually restrained and enjoined from using or operating the elevator or warehouse referred to and described in the appellant's (plaintiff in the court below) complaint in this cause for receiving, shipping, storing, or handling wheat or other grain in same until said W. W. Cargill Company shall have been duly licensed therefor by the said Railroad and Warehouse Commission, according to the prayer of said complaint.

And it is further determined and adjudged that the appellant above named do have and recover of said W. W. Cargill Company, respondent herein, the sum and amount of ninety-eight
75 (98.00) dollars, costs and disbursements in this court, and that said appellant have execution for the enforcement therefor.

Dated and signed this 2nd day of August, A. D. 1899.
By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$
Clerk's fees for making return	
Printer's fees	84.00
Clerk's fees, supreme court	14.00
Filing mandate	
Affidavits and acknowledgements	
Postage	
	$98.00

75½ STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 2nd day of August, A. D. 1899.

——— ———, *Clerk.*

76 [Endorsed:] 11521. State *ex rel.* Railroad & Warehouse Commission, appellant, *vs.* W. W. Cargill Company, respondent.

Endorsed: Filed August 2, 1899. D. F. Reese, clerk. Page No. 55, X.

77 STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of the supreme court of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record in said court in the case of State of Minnesota *ex rel.* The Railroad and Warehouse Commission, plaintiff and appellant, and W. W. Cargill Company, a corporation, defendant and respondent, in said supreme court, including the pleadings, stipulations, stipulations of fact, evidence and proofs, findings of fact, motion for findings of law and for judgment, conclusions of law, memorandum of opinion of the trial court, judgment of the trial court, judgment-roll, opinion of said supreme court in said cause, order for final judgment in said supreme court, final judgment in said supreme court, and all papers filed and proceedings had in said cause in said court.

I do further certify and return that I have annexed to said transcript and included therewith the original writ of error from the Supreme Court of the United States, the original citation issued therein, with proof of service thereon, also the original petition for the allowance of said writ of error, together with the assignment of

errors and a copy of the bond on said writ of error, and that the foregoing constitutes a full, true, and complete return in obedience to the command of said writ of error.

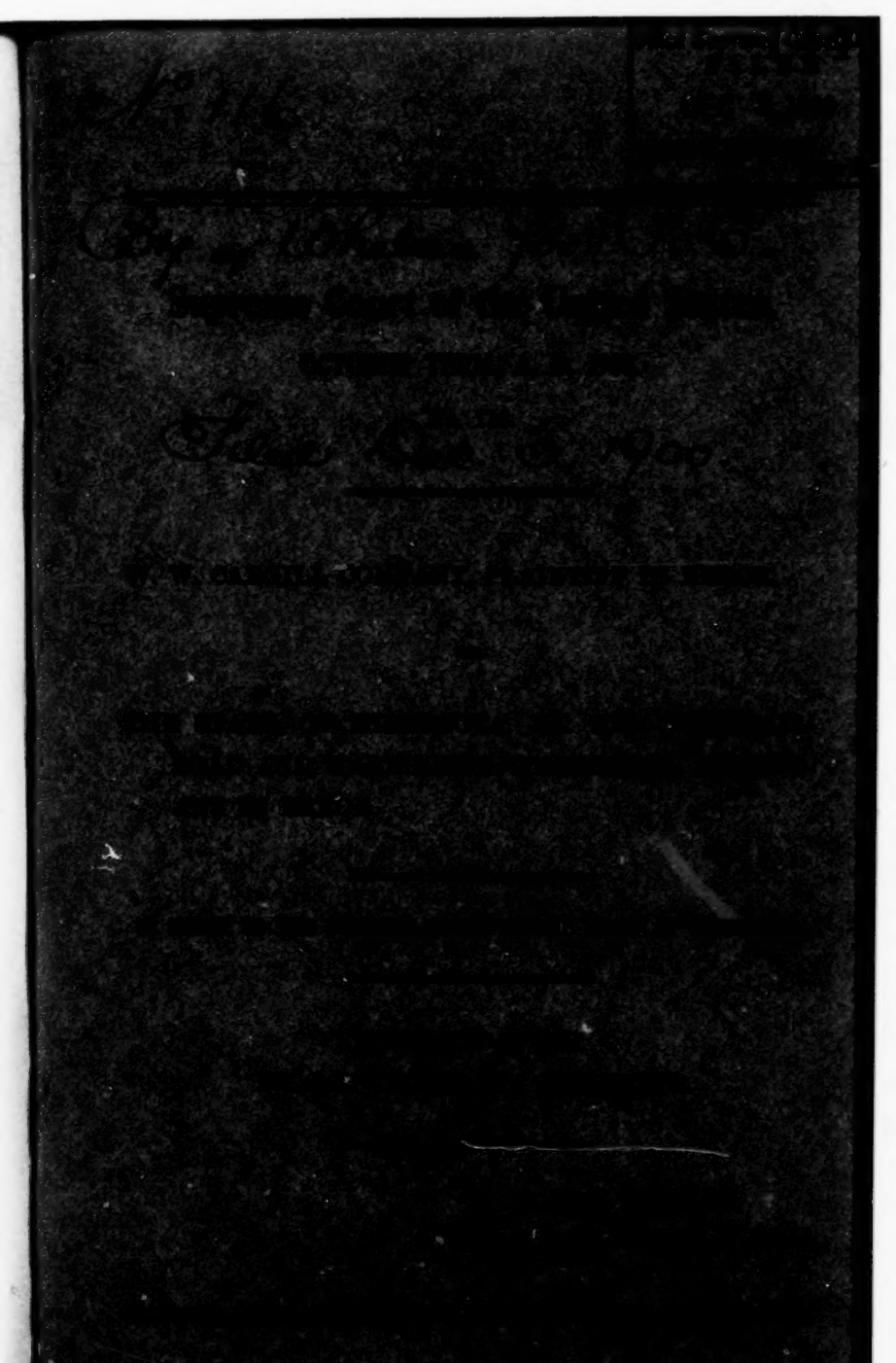
In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, St. Paul, Minnesota, this 8th day of August, A. D. 1899.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court of the State of Minnesota,
By J. L. HELM, *Deputy.*

[Endorsed:] State of Minnesota, supreme court. State of Minnesota *ex rel.* Railroad & Warehouse Commission, appellant, *vs.* W. W. Cargill Company, a corporation, respondent. Return to United States court.

Endorsed on cover: File No., 17,486. Minnesota supreme court. Term No., 116. W. W. Cargill Company, plaintiff in error, *vs.* The State of Minnesota *ex rel.* The Railroad and Warehouse Commission Filed August 11th, 1899.



1442

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 116.

W. W. CARGILL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA, EX. REL. THE RAILROAD AND WAREHOUSE COMMISSION, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is a writ of error to the Supreme Court of the State of Minnesota, brought to review a final judgment of that Court in this cause, reversing the judgment of the District Court of said State in favor of the defendant.

The action in which said judgment of said District Court was rendered in favor of the defendant was brought by the State of Minnesota Ex Rel. The Railroad and Warehouse Commission, plaintiff, against W. W. Cargill Company, defendant, and was based upon a general, or public Act of said State, to-wit: Chapter 148 of the General Laws of Minnesota, for the year 1895. (Trans. p. 19.) This Act is as follows:

"AN ACT TO REGULATE THE RECEIPT, STORAGE AND SHIPMENT OF GRAIN AT ELEVATORS AND WAREHOUSES ON THE RIGHT OF WAY OF RAILROADS, DEPOT GROUNDS AND OTHER LANDS USED IN CONNECTION WITH SUCH LINE OF RAILWAY IN THE STATE OF MINNESOTA, AT STATIONS AND SIDINGS, OTHER THAN AT TERMINAL POINTS.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. All elevators and warehouses in which grain is received, stored, shipped or handled and which are situated on the right of way of any railroad, depot grounds or any lands acquired or reserved by any railroad company in this state to be used in connection with its line of railway at any station or siding in this state, other than at terminal points, are hereby declared to be public elevators and shall be under the supervision and subject to the inspection of the railroad and warehouse commission of the state of Minnesota, and shall, for the purposes of this act, be known and designated as public country elevators or country warehouses.

It shall be unlawful to receive, ship, store or handle any grain in any such elevator or warehouse, unless the owner or owners thereof shall have procured a license therefor from the state railroad and warehouse commission, which license shall be issued for the fee of

one (1) dollar per year, and only upon written application under oath, specifying the location of such elevator or warehouse and the name of the person, firm or corporation owning and operating such elevator or warehouse and the names of all the members of the firm or the names of all the officers of the corporation owning and operating such elevator or warehouse and all moneys received for such licenses shall be turned over to the state grain inspection fund. Such license shall confer upon the licensee full authority to operate such warehouse or elevator in accordance with the laws of this state and the rules and regulations prescribed by said commission, and every person, company or corporation receiving such license shall be held to have accepted the provisions of this act, and thereby to have agreed to comply with the same.

If any elevator or warehouse is operated in violation or in disregard of the laws of this state its license shall, upon due proof of this fact, after proper hearing and notice to the licensee, be revoked by the said railroad and warehouse commission. Every such license shall expire on the thirty-first (31st) day of August of each year.

Sec. 2. No person, firm or corporation shall in any manner operate such public country elevator or country warehouse without having a license as specified in the preceding section, and any attempt to operate such elevator or warehouse without such license shall be deemed a misdemeanor to be punished as hereinafter provided, and any attempt to operate such elevator or warehouse in violation of law and without having the license herein prescribed; may upon complaint of the party aggrieved, and upon complaint of the railroad and warehouse commission, be enjoined and restrained by the district court for the county in which the elevator or warehouse in question is situate, by temporary and permanent injunction, conformably to the procedure in civil actions in the district court.

Sec. 3. The railroad and warehouse commission shall before the first (1st) of September of each year, and as much oftener as they shall deem proper, make and promulgate all suitable and necessary rules and regulations for the government and control of public country elevators and public country warehouses, and the receipt, storage, handling and shipment of grain therein and therefrom, and the rates of charges therefor, and the rates so fixed shall be deemed prima facie responsible and proper, and such rules and regulation shall be binding and have the force and effect of law; and a printed copy of such rules and regulations shall at all times be posted in a conspicuous place in each of said elevators and warehouses, for the free inspection of the public.

Sec. 4. The party operating such country elevator or country warehouse shall keep a true and correct account in writing, in proper books, of all grain received, stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or

other cause on each lot of grain received in store for sale, storage or shipment, and shall, upon the request of any person delivering grain for storage or shipment, receive the same without discrimination during reasonable and proper business hours, and shall, upon request, deliver to such person or his principal, a warehouse receipt or receipts therefor in favor of such person or his order, dated the day the grain was received, and specifying upon its face the gross and net weight of such grain, the dockage for dirt or other cause, and the grade of such grain, conformable to the grade fixed by the state railroad and warehouse commission and in force at terminal points; and shall also state upon its face that the grain mentioned in such receipt or receipts has been received into store to be stored with grain of the same grade under such inspection, and that, upon the return of said receipt or receipts, and upon the payment or tender of payment of all lawful charges for receiving, storing, delivering or otherwise handling said grain, which charges may have accrued up to the time of the return of said receipt or receipts, such grain is deliverable to the person named therein, or his order, either from the elevator or warehouse where it was received for storage; or if the owner so desires, in quantities not less than a carload on track on the same line of railway at any terminal point in this state which the owner may designate, where state inspection and weighing is in force, such grain to be subject to such official inspection and weight as may be determined upon its arrival or delivery at such terminal point and the party delivering shall be liable for the delivery of the kind, grade and net quantity called for by such certificate, less an allowance not to exceed sixty (60) pounds per car load for shrinkage or loss in transit, if such shrinkage or loss occurs. On the return or presentation of such receipts by the lawful holder thereof, properly indorsed, at the elevator or warehouse where the grain represented therein is made deliverable and upon the payment or tender of payment of all lawful charges, as hereinbefore provided, the grain shall be immediately delivered to the holder of such receipt, and it shall not be subject to any further charges for storage after demand for such delivery shall have been made, and cars are furnished by the railway company which the party operating the elevator or warehouse shall have called for promptly upon the request for shipment made by the holder of such receipt in the order of the date upon which such receipts are surrendered for shipment. The grain represented by such receipt shall be delivered within twenty-four (24) hours after such demand shall have been made and cars or vessels or other means of receiving the same from the elevator or warehouse shall have been furnished.

If not delivered upon such demand within twenty-four (24) hours after such car, vessel or other means for receiving the same shall have been furnished, the warehouse in default shall be liable to

the owner of such receipt for damages for such default, in the sum of one (1) cent per bushel and in addition thereto, one (1) cent per bushel for each and every day of such neglect or refusal to deliver; provided, no warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded by holders of different receipts or terminal orders and as rapidly as due diligence, care and prudence will justify.

On the return of said receipts, if shipment or delivery of the grain at terminal point is requested by the owner thereof, the party receiving such grain shall deliver to said owner a certificate in evidence of his right to such shipment or delivery, stating upon its face the date and place of its issue, the name of the consignor and consignee and place of destination and shall also specify upon the face of such certificate the kind of grain and the grade and net quantity exclusive of dockage, to which said owner is entitled by his original warehouse receipts and by official inspection and weighing at such designated terminal point.

The grain represented by such certificate shall be subject only to such freight or transportation or other lawful charges which would accrue upon said grain from the date of the issue of said certificate to the date of actual delivery, within the meaning of this act, at such terminal point.

All warehouse receipts issued for grain received and all certificates shall be consecutively numbered, and no two receipts or certificates bearing the same number shall be issued during the same year from the same warehouse, except, when the same is lost or destroyed, in which case the new receipt or certificate shall bear the same date and number as the original and shall be plainly marked on its face "Duplicate." Warehouse receipts or certificates shall not be issued except upon grain which has actually been delivered in said country warehouse. Warehouse receipts shall not be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received. No receipt o. certificate shall contain language in anywise limiting or modifying the liability of the party issuing the same as imposed by the laws of this state, and any such language, if inserted, shall be null and void.

A failure to specify in such warehouse receipts or certificates the true and correct grade and net weight, exclusive of dockage, of any lot of grain to which the owner of such grain may be entitled shall be deemed a misdemeanor on the part of the person issuing the same for which, on conviction, he may be punished as hereinafter provided.

Sec. 5. In case there is a disagreement between the person in the immediate charge of and receiving the grain at such country elevator or warehouse, and the person delivering the grain to such elevator or warehouse for storage or shipment, at the time of such

delivery, as to the proper grade or proper dockage for dirt or otherwise, on any lot of grain delivered, an average sample of at least three (3) quarts of the grain in dispute may be taken by one or both parties and forwarded in a suitable sack, properly tied and sealed, express charges prepaid, to the chief inspector of grain at St. Paul, which shall be accompanied by the request in writing, of either or both of the parties aforesaid, that the said chief inspector shall examine the same and report what grade or dockage or both the said grain is, in his opinion, entitled to and would receive, if shipped to the terminal points and subjected to official inspection.

It shall be the duty of said chief inspector, as soon as practicable, to examine and inspect such sample of grain and adjudge the proper grade or dockage or both, to which said sample is, in his judgment, entitled and which grain of like quality and character would receive if shipped to the terminal points and subjected to official inspection.

As soon as said chief inspector has examined, inspected and adjudged the grade and dockage, as aforesaid, he shall at once make out in writing and in triplicate a statement of his judgment and finding in respect to the case under consideration, and shall transmit by mail to each of the parties to said disagreement, a copy of the said statement of his judgment and finding, preserving the original together with the sample on file in his office.

The judgment and finding of the said chief inspector shall be deemed conclusive as to the grade or dockage or both of said sample, submitted for his consideration, as herein provided, as well as conclusive evidence of the grade or dockage or both, that grain of the same quality and character would receive if shipped to the terminal points and subjected to official inspection.

Sec. 6. Whenever complaint is made, in writing, to the railroad and warehouse commission, by any person aggrieved, that the party operating any country elevator or country warehouse under this act fails to give just and fair weights and grades, or is guilty of making unreasonable dockage for dirt or other cause, or fails in any manner to operate such elevator or warehouse fairly, justly and properly, or is guilty of any discrimination then it shall be the duty of the railroad and warehouse commission to inquire into and investigate said complaint and the charge therein contained, and to this end and for this purpose the commission shall have full authority to inspect and examine all the books, records and papers pertaining to the business of such elevator or warehouse, and all the scales, machinery and fixtures and appliances used therein.

In case the said commission find the complaint and charge therein contained, or any part thereof true, they shall adjudge the same in writing and shall at once serve a copy of such decision, with a notice to desist and abstain from the error and malpractice found,

upon the party offending and against whom the complaint was made, and to afford prompt redress to the party injured, and if such party does not desist and abstain and does not give the proper redress and relief to the party injured, it shall be the duty of the said commission to make a special report of the facts found and ascertained upon the investigation of said complaint and the charge therein contained, which report shall also include a copy of the decision by said commission made therein to the attorney of the county where such elevator or warehouse is located who shall institute and carry on in the name of the complainant such actions civil or otherwise as may be necessary and appropriate to redress the wrongs complained of and to prevent their recurrence in the future.

Sec. 7. Any person, firm or corporation operating any country warehouse or country elevator under this act, shall at any and all times when requested by the railroad and warehouse commission, render and furnish in writing under oath to the said commission a report and itemized statement of all grain received and stored in or delivered or shipped from such elevator or warehouse during the year then last passed, such statement shall specify the kind, grade, gross and net weight of all grain received or stored and all grain delivered or shipped, and shall particularly specify and account for all so-called overages that may have occurred during the year. Such statement and report shall be made upon blanks and forms furnished and prescribed by the railroad and warehouse commission.

The commission shall cause every warehouse and the business thereof, and the mode of conducting the same, to be inspected at such times as the commission may order, by one or more members of the commission or by some member of the grain inspection department, especially assigned for that purpose, who shall report in writing to the commission the result of such examination; and the property, books, records, accounts, papers and proceedings, so far as they relate to their condition, operation or management, shall, at all times during business hours, be subject to the examination and inspection of such commission.

Sec. 8. It shall be unlawful for any person, firm or corporation who shall operate any country grain elevator or country warehouse, under this act, to enter into any contract, agreement, understanding or combination with any other person, firm or corporation, who shall operate any other country grain elevator or country grain warehouse under this act, for pooling of the earnings or business of other different and competing grain elevators or warehouses so as to divide between them the aggregate or net proceeds of the earnings or business of such grain elevators or warehouses, or any portion thereof; and in case of any agreement for the pooling of the earnings or business aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 9. Any person, firm or corporation who is guilty of any of the misdemeanors specified in this act, or who is guilty of violating any of the provisions of this act, shall, on conviction, be punished by a fine of not less than fifty (50) dollars and not more than five hundred (500) dollars and in case a natural person is so convicted, he may be imprisoned until the fine is paid or until discharged by due course of law; and in case a corporation is so convicted, the fine may be collected by execution, as judgments are collected in civil actions, or the property of the corporation may be sequestered and charged with the same in appropriate legal proceedings.

Sec. 10. All laws and parts of laws inconsistent with this act are hereby repealed .

Sec. 11. This act shall take effect and be in force from and after the date of its passage.

Approved April 16th, 1895."

The plaintiff's complaint in said action, in said District Court, inter alia, alleges: That the defendant, a Wisconsin corporation, owns, maintains, and operates a public country elevator, wherein wheat, and other grains belonging to defendant and other persons are received, stored, shipped and handled, which elevator is situated in the village of Lanesboro, not a terminal point for the weighing, inspection and handling of grain, State of Minnesota, upon the right of way of the Chicago, Milwaukee and St. Paul Railway Company, a Wisconsin corporation, and upon the lands acquired and reserved by that railway company to be used in connection with its line of railway, at its station in said village: That defendant uses said elevator, in connection with said railway at said station for receiving and shipping wheat and other grains transported over the lines of railway of said railway company to and from said village, and the same is essential and necessary to said railway company in order promptly, safely and properly to handle grain received by it for shipment over its lines to and from said village, and effectively constitutes a necessary adjunct of said railroad in such regard: That defendant has never applied for, or procured a license to receive, ship, store or handle grain in said elevator, and is operating the same without authority, and in violation of said statute. The

prayer of the complaint is "that the defendant be permanently restrained, and enjoined from the further operation of the said elevator in receiving, shipping, storing, or handling of wheat or other grains in the same, until it shall have become duly licensed therefor by the said Railroad and Warehouse Commission, and for its costs and disbursements." (Trans. ps. 12-13.)

The defendant, for its answer, after admitting that the Railroad and Warehouse Commission is composed of the persons in the complaint alleged, duly qualified and acting; that defendant is a Wisconsin corporation, the owner of a certain warehouse, or elevator, situate as in the complaint alleged, and has not applied for or procured a license to receive, ship, store, or handle grain in such warehouse or elevator, pleads the general denial. (Trans. p. 14.)

Said action was tried in, and submitted to said District Court on An Agreed Statement of Facts, (Trans. ps. 16-19) and the facts admitted in the pleadings. Therefrom it appears: That the defendant, W. W. Cargill Company, a Wisconsin corporation, was engaged in the business of buying, selling and dealing in grain, having its principal place of business at La Crosse, Wisconsin, and owned and operated large terminal grain elevators, situated in said La Crosse, and in Green Bay, Wisconsin, and divers other grain warehouses and elevators, situated in other places in said state: That defendant also owned a certain grain warehouse situated in the village of Lanesboro, State of Minnesota, upon the railway line of the Chicago, Milwaukee and St. Paul Railway Company, distant about 54 miles west from, and having by said line of railway direct railway connection with said City of La Crosse: That considerable quantities of grain of different kinds were annually raised in Fillmore County, Minnesota, where said village of Lanesboro was situated, and were marketed, sold, and delivered into the divers local grain elevators, and warehouses in said village, and thence shipped away in cars over said line of railway, which, except wagons drawn by horses, were the only means or instrumentalities for such shipment:

That defendant's building in question was not a grain elevator, but a small grain warehouse, situated on the right of way of said Railway Company, and near to its track in said village, and was occupied and operated by defendant continuously, and had been long prior to the commencement of this action: That said warehouse was of a certain size, description, had a certain location, and was operated in a certain manner, all as described in paragraphs 6, 7, 8, and 9 of the Agreed Statement of Facts, (Trans. p. 17): That defendant used and operated said warehouse, and ever had, to receive, store, ship and handle *its own grain only*, and that of no other person or persons, which grain was *contracted for*, and *purchased*, and received into, and deposited, and handled in said warehouse by the defendant *for the express purpose* of being *shipped*, and transported as the defendant's sole property, and *was actually so shipped* and transported, and had ever been, from said warehouse in carload lots, *directly* and *continuously* over said railway line, *beyond the boundaries of Minnesota* to its said terminal elevators in said cities of La Crosse and Green Bay, or to Milwaukee, Wisconsin, or Chicago, Illinois, and thence to other points in divers states east of Lake Michigan: That defendant has *never received, stored, shipped, or handled* in said warehouse any *grain for, or belonging to any other person or persons*, and has never issued, or offered to issue any warehouse receipt or storage ticket to any person whatever for grain received into said warehouse: That all grain purchased by defendant, and received into said warehouse was, as fast as received, shipped and transported from said warehouse in carload lots of the same kind and grade, or different kinds and grades: That no grain received, deposited, or handled in said warehouse by defendant was, or ever had been bargained, sold, or delivered to any person, firm, or corporation doing business, or resident in, or a citizen of Minnesota; or was, or ever had been shipped or transported to, or delivered at any city, village, town, point or place within the boundaries of Minnesota: That all grain received into, deposited, handled in, or shipped from said warehouse, or that had ever been,

by defendant, was, and had been grown in Minnesota, and was, and had been sold and delivered to, and received by defendant into said warehouse from citizens or residents of, or persons doing business in Minnesota, the weights, grades, dockage and inspection of all such grain being, and having always been, fixed by mutual agreement between such persons and defendant, and without controversy in respect thereto: That no weighing, grading, docking, or inspection of any kind, or supervision or regulation thereof, of any grain received, stored, shipped or handled in said warehouse, by defendant, was, or ever had been done or performed, or attempted or offered to be done or performed in or about said warehouse, on receipt or shipment of any of said grain, or at any other time or place, by any person delegated, or furnished by, or acting for or under the authority of the State of Minnesota, or of any law thereof, or of its Railroad and Warehouse Commission, or any rule, regulation, officer, agent, or representative of such Commission, or by any person whatever, in any capacity whatever: That said village of Lanesboro is not a terminal point for weighing, inspecting, and handling grain: That defendant has not applied to said Railroad and Warehouse Commission for a license, and has procured none to receive, ship, store, or handle grain in said warehouse.

On the trial of said action, in said District Court, after the admissions of parties, proofs, and testimony in the case were all in, and the evidence closed, defendant, by its counsel, moved the court for findings of law, and judgment in its favor for reasons, among others, as follows: "2. That the provisions of Chapter 148, of the General Laws of Minnesota, for the year 1895, have no application to this case upon its facts, and that this case does not fall within the intent and purpose of those provisions or any of them." "3. That upon the facts in this case it appears that the defendant has not violated any of the provisions of Chapter 148, of the General Laws of Minnesota for the year 1895, or any of said provisions, according to their intent and purpose." "4. That the provisions, and each

thereof, of Chapter 148 of the General Laws of Minnesota for the year 1895, considered as applicable to the facts in this case, were not enacted in the legitimate exercise by the State of its police power, do not conduce to any legitimate police purpose, or constitute any police regulation in fact, have no relation whatever to, or tendency to accomplish any matter or thing which is a proper subject of police regulation, are unreasonable, and constitute an arbitrary and unwarranted interference with the right of a person to pursue a lawful business in handling his own sole property, for his own sole purposes, and are unconstitutional, illegal, and void." "7. That the provisions, and each thereof, of Chapter 148, of the General Laws of Minnesota for the year 1895, considered as applicable to the facts of this case, are repugnant to Section one of Article fourteen of the amendments of the Constitution of the United States, and are unconstitutional, illegal, and void." "8. That the provisions, and each thereof, of Chapter 148 of the General Laws of Minnesota for the year 1895, considered as applicable to the facts of this case, are repugnant to Section two, of Article four, of the Constitution of the United States, and are unconstitutional, illegal and void." "9. That the provisions, and each thereof, of Chapter 148, of the General Laws of Minnesota for the year 1895, considered as applicable to the facts of this case, are repugnant to that clause of Section eight of Article one of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, and are unconstitutional, illegal, and void." (Trans. ps. 19-20.)

Thereupon, and after hearing argument of counsel, said District Court granted said motion of defendant, and made and filed in said action its findings of law, and order for judgment for defendant, as follows:

"CONCLUSIONS OF LAW.

Laws 1895, Chapter 148, by its terms applies to elevators and warehouses in which only the grain of the owner is received, stored,

shipped, or handled as well as the elevators and warehouses in which grain of the public is received, stored, shipped, or handled for hire.

Laws 1895, chapter 148, construed as above, is unconstitutional and void in so far as it attempts to declare warehouses and elevators in which only the grain of the owners is received, stored, shipped, or handled, public elevators, and declaring such elevators and warehouses to be under the supervision and subject to the inspection of the Railroad and Warehouse Commission, and in so far as it attempts to apply to such elevators and warehouses. Said law when so applied does not constitute a proper or lawful exercise of the police power and is in conflict with and repugnant to section one, article fourteen, of the amendments to the Constitution of the United States and to section seven, article one of the constitution of the State of Minnestoa.

Laws 1895, chapter 148, except as it applies or purports to apply to elevators and warehouses in which the grain of the owner only is received, stored, shipped, or handled, is constitutional and valid, being a proper and lawful exercise of the police power of the State.

The plaintiff has failed to establish against the defendant any cause of action, and defendant is entitled to judgment that plaintiff take nothing and have no relief in this action, and that defendant recover its costs and disbursements herein.

Let judgment be entered accordingly." (Trans. ps. 24-25.)

Said District Court also filed with its findings, and order for judgment, its memorandum of opinion set forth here at length in the Transcript of Record. (Trans. ps. 25-28.)

Pursuant to the findings, and order of said District Court, judgment was duly entered therein for the defendant. (Trans. ps. 29-30).

Thereafter plaintiff appealed from the said judgment of said District Court in said action to the Supreme Court of Minnesota, and assigned, among other errors, the following:

"The Court erred in holding that Laws 1895, chapter 148, is unconstitutional and void, in so far as it attempts to declare warehouses and elevators in which only the grain of the owner is received, stored, shipped, or handled public elevators, and declaring such elevators and warehouses to be under the supervision and subject to the inspection of the Railroad and Warehouse Commission, and in so far as it attempts to apply to such elevators and warehouses; said law, when so applied, does not constitute a proper or lawful exercise of the police power, and is in conflict with and re-

pugnant to section one, article fourteen, of the amendments to the Constitution of the United States, and to section seven, article one, of the constitution of the State of Minnesota." (Trans. ps. 10-11.)

On the trial of said action in said Supreme Court the judgment of said District Court was reversed, and final judgment was entered for the plaintiff and appellant. (Trans. ps. 38-39.) This final judgment was rendered by a Court divided in opinion,—Justice Mitchell not concurring, but writing a dissenting opinion. The Court's majority opinion, and reasons for rendering such final judgment, as well as the dissenting opinion of Justice Mitchell, are set forth here at length in the Transcript of Record (Trans. ps. 31-34), and are reported in 77 Minnesota Reports, p. 223.

To review this final judgment of said Supreme Court the action is brought to this Court on Writ of Error, and errors are assigned. (Trans. ps. 7-10.)

SPECIFICATION OF ERRORS RELIED UPON.

The errors here asserted, and intended to be urged, are as follows:

1.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 was enacted in legitimate exercise by said State of Minnesota of its police power in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 7.)

2.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 conduces to any legitimate police purpose or has any relation whatever to or tendency to accomplish any matter or thing which is a proper or legitimate subject for police regulation in so far as said law attempts to declare

elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to be subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 7.)

3.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not unreasonable, illegal, and void, and does not constitute an arbitrary, unwarranted, and unlawful interference with the right of a person to pursue a lawful business in handling his own sole property for his own sole purposes, in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to be subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 7.)

4.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, and is not illegal, unconstitutional, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehosues, and to make the same subject to the supervision, inspection, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 8.)

5.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property without due process of law, and is not illegal, unconstitutional, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 8.)

6.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, providing that no State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws, and is not unconstitutional, illegal and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 8.)

8.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to that clause of section eight, article one, of the Constitution of the United States granting to Congress the power 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes,' and is not unconstitutional, illegal and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 9.)

9.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to that clause of section eight, article one, of the Constitution of the United States granting to Congress the power 'to regulate commerce with foreign nations, and among the several States, and with Indian tribes,' and is not unconstitutional, illegal, and void in so far as said law attempts to declare elevators or warehouses in which is received, stored, shipped, or handled only the grain of the owner solely purchased and placed in the same for the purpose of shipment and actually shipped from said elevators or warehouses beyond the boundaries of the State of Minnesota into the State of Wisconsin, or the State of Illinois, or to other States, public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 9.)

10.

"That said court erred in holding, under the conceded facts as appears by the record aforesaid, that a corporation or person solely engaged in purchasing grain in the State of Minnesota and receiving the same into his own private elevator or warehouse for the sole purpose of shipment and actually shipping the same from such elevator or warehouse to points beyond the boundaries of the

State of Minnesota and into Wisconsin, Illinois, and other States should be compelled for a money consideration to procure a license from said State of Minnesota to engage in such business and to be subject to the rules and regulations of the State Railroad and Warehouse Commission, for the reason that such grain so purchased and shipped immediately upon its purchase becomes a subject of interstate commerce within the commerce clause of section eight, article one, of the Constitution of the United States, and cannot be interfered with or acted upon under the provisions of said chapter 148 of the General Laws of Minnesota for the year 1895." (Trans. p. 9-10.)

11.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 and the proceedings thereunder in this action, as appears by the record aforesaid, by which the said plaintiff in error has been by a final judgment in the highest court of the State of Minnesota in which a decision in said action could be had perpetually enjoined from further operating its said elevator or warehouse in receiving, shipping, storing, or handling its own wheat or other grain in the same until said plaintiff in error shall have become duly licensed therefor under said law by the State Railroad and Warehouse Commission, are not illegal, unconstitutional and void, and in violation of Section one of Article fourteen of the amendments of the Constitution of the United States, and of section two of article four of the Constitution of the United States, and of the commerce clause of section eight of article one of the Constitution of the United States, and of the fundamental principles of justice which underly the system of State and Federal Government in the United States." (Trans. p. 10.)

12.

"That said court erred in that by the record aforesaid it appears that the judgment aforesaid given was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff in error against the said defendant in error.

And the said W. W. Cargill Company, a corporation, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it, said W. W. Cargill Company, may be restored to all the things which it has lost by occasion of the said judgment, etc." (Trans. p. 10.)

THE QUESTIONS INVOLVED.

FIRST.

Whether said Act (Ch. 148, G. L. Minn. 1895) is repugnant to section one, of article fourteen, of the amendments to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law, and is illegal, unconstitutional, and void, especially in so far as said act attempts to declare elevators and warehouses, in which only the grain of the owner is received, stored, shipped, or handled public elevators and warehouses, and to make the same subject to the provisions of said act, and to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor. In connection with the foregoing:

1. Whether statutes regulating the business of receiving, handling, storing and shipping grain, and the fixing of charges for such services, which have been held constitutional by the Courts, have been statutes regulating the receiving, shipping, storing, and handling of grain, *for the public, for compensation*, and enacted as police regulations, under the protective power of the State to secure the general safety.

2. Whether said act was enacted in the legitimate exercise by the State of Minnesota of its police power, conduces to any legitimate police purpose, or has any relation whatever to, or tendency to accomplish any matter or thing which is a proper, or legitimate subject for police regulation, especially in so far as said act attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped or handled public elevators and warehouses, and to be subject to the provisions of said act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

3. Whether the Minnesota Supreme Court has made any interpretation of said act conclusive on this court, and whether said act, even as interpreted, is constitutional, and valid, and especially as applied to the facts of the case at bar.

4. Whether the provisions of said Act are so connected, and interdependent, that all must fall, if a part only are unconstitutional and void, and especially as applied to the facts of the case at bar.

5. Whether the mere fact that an elevator or warehouse, not used for receiving, handling, or storing grain for others than the owner, is situated on railroad raight-of-way, depot grounds, or land acquired by a railroad company for railroad purposes at one of its stations, or sidings, makes the use and operation of such elevator or warehouse, so situate, a proper or legitimate subject for police regulation, gives to the State the right to require a license for its operation, to declare it a public elevator or warehouse, to be subject to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to the provisions of said act.

6. Questions concerning the constitutionality of certain provisions of said act.

SECOND.

Whether said Act (Ch. 148, G. L. Minn. 1895) is repugnant to section one, of article fourteen of the amendments to the Constitution of the United States, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws, and is not unconstitutional, illegal and void, especially in so far as said law attempts to declare elevators and warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators and warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such

owner to purchase a license therefor. In connection with the foregoing:

1. Whether the fact, that said Act applies only to elevators and warehouses, situated on railroad right-of-way, depot grounds, or land acquired, or reserved by a railroad company for use in connection with its line of railway at one of its non-terminal stations, or sidings, does not render the Act invalid, and especially so as applied to the facts of the case at bar, as denying to the owners of such elevators, and warehouses, and especially this plaintiff in error, the equal protection of the laws.

THIRD.

Whether said Act (Ch. 148. G. L. Minn. 1895) is repugnant to that clause of section eight, article one, of the Constitution of the United States, granting to Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," and is not unconstitutional, illegal and void, especially in so far as said Act attempts to declare elevators and warehouses in which is received, stored, shipped or handled only the grain of the owner, solely purchased and placed in the same for the purpose of shipment, and actually shipped from said elevators and warehouses, beyond the boundaries of Minnesota, and into other States, public elevators and warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to pay a license therefor.

The foregoing, and all other questions raised now in this Court under the specification of errors here relied on, were raised and urged on the trial of the action in one, or both, of the courts below.

BRIEF OF ARGUMENT.

POINTS AND AUTHORITIES.

The jurisdiction of this Court in this case is claimed on the ground, as shown by the record, that it is a writ of error brought to review a final judgment in a suit in the highest court of the State of Minnesota, in which a decision in the suit could be had, where is drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision is in favor of their validity. (R. S. of U. S., Sec. 709.)

Columbia Water Power Co. vs. Columbia &c. Co., 19 Sup. Ct. Rep. 247.

Sully vs. Am. Nat. Bank, 20 Sup. Ct. Rep. 935.

POINT I.

Said Act (Ch. 148, G. L. Minn. 1895) is repugnant to Section one, of article fourteen, of the amendments to the Constitution of the United States, providing, that no State shall deprive any person of life, liberty, or property, without due process of law, and is illegal, unconstitutional, and void, and especially in so far as said Act attempts to declare elevators or warehouses, in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make them subject to the provisions of said Act, and to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor (Specification of Errors Nos. 4 & 5, *supra;* Trans. p. 8). The discussion of this point involves the discussion of the following questions:

I.

Statutes regulating the business of receiving, handling, storing and shipping grain, and the fixing of charges for such services, which have been held constitutional by the courts, have been statutes regulating the receiving, shipping, handling and storage of grain *for the public, for compensation*, and enacted as police regulations under the protective power of the state, to secure the general safety.

In the year 1871 the Illinois legislature passed an Act, which became a law, entitled: "An Act to Regulate Public Warehouses, and the Warehousing and Inspection of Grain, and to Give effect to Article 13 of the Constitution of this State." R. S. of Ill. (1877, Hurd.) Chap. 114, Sec. 120 et. seq. The Illinois Constitution of 1870, Art. 13, Sec. 1, is as follows: "All elevators or storehouses, where grain or other property is stored *for a compensation*, whether the property stored is kept separate or not, are declared to be public warehouses." R. S. of Ill. (Hurd. 1877) p. 73.

Munn vs. Illinois, 94 U. S. 113. In this leading and well known case it appeared: 1st. That the Constitution of Illinois (said Art. 13, Sec. 1), over which said Act of 1871 in question was drawn, provided: "All elevators or storehouses where grain or other property is *stored for a compensation* * * * are declared to be "*public warehouses*"; 2nd. That said Act of 1871, Sec. 2, provided: "Public warehouses of class 'A' shall embrace all warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, * * * located in cities having not less than one hundred thousand inhabitants"; 3rd. That Munn, and Scott "unlawfully transacted the business of *public warehousemen*, as aforesaid, without procuring a license" * * * "and they then and there carried on the business of receiving, storing and delivering grain *for hire*, without having taken a license" * * * "charged for storing and handling grain higher rates than those fixed by statute." This Court held: "An Act to regulate *public warehouses*, and the warehousing and inspection of grain, and to give effect to Article 13 of the Constitution of this State, is not repugnant to the Constitution of the United States."

In the case of *Wabash &c. Ry. Co. vs. Illinois, 118 U. S. 557, 569*, this Court said: "That case (Munn vs. Illinois) presented the

question of a private citizen, or unincorporated partnership, engaged in the warehousing business in Chicago, free from any claim of right or contract under an Act of incorporation of any State whatever, and free from the question of continuous transportation through several states. And in that case the court was presented with the question which it decided, whether any one engaged in a *public business* in which *all the public had a right to require his service*, could be regulated by acts of the legislature in the exercise of this *public function and public duty*, so far as to limit the amount of charges that should be made for such services."

In the year 1888 the New York legislature passed an Act, which became a law, entitled: "An Act to Regulate the Fees and Charges for elevating, Trimming, Receiving, Weighing and Discharging Grain by Means of Floating and Stationary Elevators and Warehouses in This State." (Ch. 581, Laws N. Y. 1888.) The Act fixed the maximum charges for this work, and provided a penalty for violation.

Budd vs. The State of New York, 143 U. S. 517. This was a case in error to review a judgment of a New York court, adjudging that said Budd pay a fine, and in default thereof, be committed to jail for a violation of said Act of 1888. He was indicted and found guilty, as Manager of the Wells Elevator Company, in the City of Buffalo, a stationary elevator on land, *of charging and receiving from the Lehigh Valley Transportation Company fees, for elevating, and handling certain grain for it* from its vessel, which were in excess of the maximum fees allowed by said Act. This Court affirmed the judgment below, and adjudged said Act valid.

In the year 1891 the North Dakota legislature passed an Act, which became a law, entitled: "An Act to Regulate Grain Warehouses, and the Weighing and Handling of Grain, and Defining the Duties of the Railroad Commission in Relation Thereto." (Ch. 126, Laws of North Dakota 1891.) Section 4 of said Act provided: "All buildings, elevators, or warehouses in this State, erected and operated, or which may hereafter be erected, and operated by any person or persons * * * for the purpose of buying, selling, storing, shipping or handling grain *for profit* are hereby declared public warehouses, and the person or persons * * * owning or operating said buildings * * * are public warehousemen within the meaning of this Act." * * * Other provisions of

the Act required the proprietor, lessee, or manager of any public elevator or warehouse to give a bond to the State; fixed the maximum charges for storing and handling grain; required the warehouseman to keep the grain insured at his own expense, and provided a penalty for breach, etc.

Brass vs. Stoeser, 153 U. S. 391. This was a case in error to review a judgment of a North Dakota court. The validity of said Act of 1891 was involved. Brass owned and operated an elevator in Grand Harbor, North Dakota, in which his principal business was receiving, handling and shipping to Minneapolis and Duluth his *own wheat*, and the handling of the wheat of other people was a *mere incident* when he had storage capacity, not otherwise. He refused to receive certain grain when he had room for it, and wholly refused to store it at the rates provided by statute. This Court held, that one who enters upon the business of elevating, and storing the *grain of other persons for profit*, in North Dakota, becomes subject to the statutory regulations, although he also elevates and stores his own grain in the same warehouse. In its opinion this court, on page 404, said: "We do not understand this law to require the owner of a warehouse, *built and used by him only to store his own grain* to receive and store the grain of others. *Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profit.* Then he becomes subject to the statutory regulations, and he cannot escape them by asserting that he also elevates and stores his own grain in the same warehouse."

Rippe vs. Becker, 56 Minn. 100, 108. In this case Justice Mitchell said: "The right of the State in the exercise of its police power *to regulate* the business of receiving, weighing, inspecting and storing grain *for others* in elevators or warehouses, as being a business affected with a public interest, is now settled beyond all controversy. This power extends even to fixing the charges for such services." And he cites the Munn and Budd cases, supra.

We cite also

Granger cases, 94 U. S. 155–187.
Gurney vs. Elevator Co., 63 Minn. 70.
Stewart vs. Great Northern Ry. Co., 68 N. W. Rep. 208.

It is the business of receiving, handling, storing, and shipping grain *for others,* that courts have adjudged to be a business charged with a public interest, and for that reason subject to regulation by Statute.

2.

Said Act (Ch. 148 G. L. Minn. 1895) was not enacted in the legitimate exercise by the State of Minnesota of its police power. Does not conduce to any legitimate police purpose, nor has it any relation whatever to, or tendency to accomplish any matter or thing which is a proper or legitimate subject for police regulation, and especially in so far as said Act attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped or handled public elevators or warehouses, and to be subject to the provisions of said Act, and to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor. (Specifications of Errors Nos. 1, 2, 3, Supra; Trans. p. 7.)

No precise limits have been placed upon the police power of the State. The attempted definitions of that power seem to furnish no well defined criterion by which to test cases as they arise. A criterion for determining whether a given Statute has been enacted in the legitimate exercise by the State of its police power is to be found, it is believed, by considering the *purpose* to be secured by the State's exercise of that power. This is to be found among the purposes for which State government is formed. The power of the State to enact laws is limited to the purposes for which it is formed. These, apart from maintaining its own organization, appear to be

to secure the general safety, and to provide for the general welfare. To the end of securing the general safety, State government is endowed with *protective power*, by the exercise of which it protects itself and its citizens against human wrong-doing, and physical danger. To the end of providing for the general welfare State government is endowed with a general governmental power, difficult to define, not necessarily protective, by the exercise of which the State does all that it deems proper for the purpose of providing the general facilities of life, and of elevating the general standard of living. An extended use of the principle of co-operation appears to be involved. These two purposes and ends of State government certainly differ fundamentally in their scope, and it would seem should be regarded as the foundation of two distinct powers. The power vested in government to secure the general safety, and which enables the State to protect itself, and its citizens against human wrong-doing and physical danger is the protective, or what is termed the police power of the State. Properly considered it is not co-terminous with the whole end and object of government, is not identical with sovereignty itself, and is to be distinguished from that general governmental power, inherent in every form of government, to legislate in regard to the public welfare, or public policy of the State.

"The term is now somewhat loosely used in the most comprehensive sense, i. e., so as to embrace the whole system of internal regulations of personal and property rights. It would tend to avoid confusion if the definition were confined and the use of the term were limited to those restraints upon private rights and liberties which the morals, health, or peace of the community may require, leaving other regulations that have no direct relation to morals, health, or peace, but are authorized as being in the interest of the public at large and as subserving the public policy or welfare of the State, to be characterized as general governmental powers or institutions. * * * Many other examples might be given to show that the loose use of the term 'police power' is misleading, and that it would tend to clearness if, as suggested above, the term were confined to statutes or regulations affecting the public health, morals, or peace, and if such other legislation as related to the

public welfare or public policy of the State were designated as within those general governmental powers inherent in every form of government. A classification of this kind would simplify the consideration of many cases, and would avoid much apparent conflict. Rules which are wise and necessary in construing police powers in the narrower sense indicated would then be recognized at once as not at all relevant to the discussion of other governmental powers."

Guthrie, 14th Amend. to Con. of U. S., ps. 74, 75 and 76.

"Discussions of what is called the 'police power' are often uninstructive, from a lack of discrimination. It is common to recognize that the subject is hardly susceptible of definition, but very often, indeed, it is not perceived that the real question in hand is that grave, difficult and fundamental matter—what are the limits of legislative power in general? * * * But often, the discussion turns upon the true limits and scope of legislative power in general —in whatever way it may seek to promote the general welfare."

Thayer, Cases on Con. Law, part 2, 693, note.

"With the Legislature, the maxim of the law, '*salus populi suprema lex*,' should not be disregarded. It is the great principle on which the statutes for the security of the people is based. It is the foundation of criminal law, in all governments of civilized countries, and other laws conducive to safety and consequent happiness of the people. This power has always been exercised by government, and its existence cannot be reasonably denied. How far the provisions of the Legislature can extend, is always submitted to its discretion, *provided its Acts do not go beyond the great principle of securing the public safety*—and its duty, to provide for this public safety, within well defined limits and with discretion, is imperative."

State vs. Noyes, 47 Me. ps. 189, 211–212.

In Matter of Petition of Cheeseborough, 78 N. Y. 232.

In determining whether a law is enacted in the legitimate exercise by the State of its police power the test, the criterion is: Does the law in any way secure, or help to secure the safety of the people of the State generally? Does it protect, or help to protect the State, and its citizens against human wrong-doing, or physical danger? If it does, then the State in enacting such law has acted within the

limits of its police power; if it does not, then the State has not acted within the limits of that power. Applying this criterion to the statutes of Illinois, New York, and North Dakota, referred to supra, the courts declared each of those enactments to be a proper exercise of the State's protective power, because they protected its citizens against human wrong-doing, and were within prescribed constitutional limitations. To say that the business of storing and handling grain for others is a business "affected with a public interest" is but another way of saying that it is a business, the regulation of which in such reasonable way as to secure the general safety is within the protective power of the State. The citizens so protected were those whose grain was stored and handled in, who used the warehouses brought within the operation of the laws. The use of such warehouses for the storage and handling of grain *for the public* was, therefore, the very postulate, the condition precedent, moving the legislature to enact, and the courts to set their seals of judicial approval upon those statutes. Cut out of those statutes the element, *public use*, and their enactment would be outside of the legislative power of the state, and prescribed constitutional limits. It follows, therefore, that, when an elevator or warehouse, owned by a private corporation or individual, is not used to store and handle grain for the public, for the citizens of the State, but is used by its owner, in his private capacity as a warehouseman, to store or handle only his own grain for his own private use, such use of the elevator or warehouse is outside of the power of the State to regulate by law. Any law of the state which attempts to regulate, or in any way interfere with the use and operation of such an elevator or warehouse, devoted wholly to the private use of its owner or possessor, and not in any way to a public use, is beyond the power of the legislature to enact, contravenes established constitutional limitations, and becomes an arbitrary and unwarranted interference with the right of a private person to pursue a lawful business in handling his own, sole property, for his own, sole use and purposes.

Under the facts of this case, the citizens of the state, the public, deposited no grain in defendant's elevator; had no grain stored or handled in or shipped from the same; did not purchase or receive any grain from the same; did unload grain from their wagons into the same after its purchase by defendant; did not in any manner use the same and needed no protection from the state by reason of defendant's use and operation of such elevator. As applied to the facts in this case, therefore, the Act, Chapter 148, Gen'l Laws of 1895, has no relation to or tendency to accomplish, any matter or thing which is a proper subject of police regulation, and becomes an arbitrary and unwarranted limitation upon defendant's rights of personal liberty and private property, contravenes Section 1, of Article 14 of the amendments to the Constitution of the United States, and is illegal and void.

Amend. Const. U. S. Art. 14, Sec. 1.
Brass vs. Stoeser, 153 U. S. 391.
Rippe vs. Becker, 56 Minn. 100.
Stewart vs. Great Northern Ry. Co., 65 Minn. 515.
State vs. Corbett, 57 Minn. 345, 349.
State vs. Donaldson, 41 Minn. 74.
State vs. Ry. Co., 71 N. W. Rep. 400.
Hennington vs. Georgia, 163 U. S. 299.
Plessy vs. Ferguson, 163 U. S. 537, 539.
Mugler vs. Kansas, 123 U. S. 623, 661.
In re Jacobs, 98 N. Y. 98.
Smyth vs. Ames, 169 U. S. 466.

3.

The Minnesota Supreme Court has made no interpretation of said Act conclusive on this Court, and said Act, even as interpreted, is unconstitutional and void, as applied to the facts of the case at bar.

If it be claimed that this Court, in considering the validity or effect of the Act in question, as applied to the facts of the case at bar, must accept the construction placed upon it by the Minnesota Supreme Court, Missouri, etc., Ry. Co. vs. McCann, 19 Sup. C't. Rep. 755, and that the interpretation of a State statute by the Supreme Court of the State, as to the divisibility of provisions, some of which are unconstitutional, is binding on this Court, Noble vs. Mitchell, 164 U. S. 367, we answer:

(1) Such is not the invariable rule of this Court. In the case of Atchison etc., Ry. Co. vs. Mathews, 19 Sup. C't Rep. 609, 611, this court said: "This Court is not concluded by the opinion of the Supreme Court of the State. Yick Wo vs. Hopkins, 118. U. S. 356, 366. It forms its own independent judgment as to the scope and purpose of a statute, while, of course, leaning to any interpretation which has been placed upon it by the highest Court of the State."

(2) The Minnesota Supreme Court held, (Trans. ps. 31-33) that the business carried on by defendant at his warehouse was of such a public character, and sufficiently affected with a public interest, that the provision of the act in question requiring defendant to take out a license to operate such warehouse was valid; that many of the provisions of the act have no application to a warehouse such as defendant's, and the business as there conducted; and say: "There are, perhaps, provisions in the Act which it would be unconstitutional to apply to such a warehouse as this." This was the extent of that Court's interpretation of the Act, if interpretation it can be called. The entire Act was before the Court in a case, where adjudication as to the applicability or validity, as applied to such case, of every provision was relevant. Yet the Court dismissed the case after holding the single provision as to taking out a license valid as applied to defendant's warehouse business, at the same time conceding that other provisions were inapplicable, or invalid, as applied to such a case, without stating what those provisions were.

The Court in interpreting the statute, save in one instance, makes no attempt to sever, or even name the provisions it holds applicable to this case from those it holds inapplicable; or the provisions it holds valid, as applied to this case, from those it holds invalid. The legislature declares *all* elevators and warehouses falling within the purview of the act, whether used for the storage of grain for others or not, to be public elevators and subject to all the provisions of the act. Section 1, of said Act provides: "And every person, company, or corporation receiving such license shall be *held* to have *accepted* the provisions of this Act, and thereby to have *agreed to comply with the same.*" Section 3, gives the Railroad and Warehouse Commission power to prescribe rules and regulations for the government and control of public country elevators and warehouses, and provides that, "such rules and regulations shall be binding and have the force and effect of law." Section 4, provides: "The party operating such country elevator or country warehouse * * * *shall*, upon the request of any person delivering grain for storage or shipment, *receive the same without discrimination*, * * * and *shall*, upon request, *deliver* to such person or his principal a *warehouse receipt*, or *receipts*, therefor, in favor of such person, * * * which receipt shall also state upon its face that the grain mentioned in such receipt or receipts has been received into store," * * * "and that upon the return of said receipt or receipts, and upon payment or tender of payment of all lawful charges," * * * "such grain is deliverable to the person named therein, or his order, either from the elevator or warehouse where it was received for storage; or, if the *owner so desires*," * * * "on track on the same line of railway *at any terminal point in this State*, which the *owner may designate*, where state inspection and weighing is in force." The terminal points where state inspection and weighing are in force as fixed by Statute are Minneapolis, Duluth, St. Paul and St. Cloud. Section 7, requires the operator of any country elevator or warehouse under the Act to render to the

Railroad and Warehouse Commission itemized reports under oath of all grain received and stored in, or delivered or shipped from the same during the year last past; to submit such elevator or warehouse to inspection by the Commission, at its pleasure; to submit the books, records, accounts, papers and proceedings to the examination and inspection of the Commission. Other provisions might be cited. An inspection of the above mentioned, and other provisions of the Act shows that it was not only relevant to the case, but that defendant had the highest *right* to have the Minnesota Supreme Court point out the applicable and inapplicable, the valid and invalid provisions of the Act, as applied to his warehouse business, and adjudge whether the act was severable in its provisions, or whether the valid must fall with the invalid as applied to defendant's warehouse business. We claim that this Statute comes before this Court, unaccompanied by such interpretation by the Minnesota Supreme Court as to bring it within the rule, that an intepretation of a State statute by the Supreme Court of the State, as to the divisability of provisions some of which are unconstitutional, is binding on this Court. Noble case, Supra.

(3) Even assuming that the interpretation of the Act by the Minnesota Supreme Court, and its holding as to the provision requiring defendant to take out a license extended as far as the case before it demanded, still the Act even as thus interpreted, is unconstitutional and invalid as applied to the facts of the case at bar, and the holding error, because section 1, provides that: "Every person, company, or corporation, receiving such license shall be *held* to have *accepted* the provisions of this Act, and *thereby* to have *agreed to comply* with the same;" and because many of the provisions of the Act which follow necessarily as an incident to taking out a license, and which such licensee by the very act of taking out a license, is forced under the terms of the Statute to accept and agree to comply with are manifestly unconstitutional and void, as applied to the facts of the case at bar. Take for example the provisions cited above, from Sections 4 and 7.

The Act thus interpreted also violates the Federal Constitutional requirement of equal laws.

This Court has said: "It is well settled that upon the construction of the constitution and laws of a State this Court, as a general rule, follows the decisions of her highest Court, *unless* they conflict with, or impair the efficacy of some provision of the Federal Constitution or of a Federal Statute, or a rule of General Commercial Law."

Stutsman County vs. Wallace, 142 U. S. 293.

4.

The provisions of said Act are so connected, and interdependent that all must fall, if a part only are unconstitutional, and void as applied to the facts of the case at bar.

The rule laid down by Cooley, and adopted substantially by this Court, is that if the provisions of the Act "are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not pass the residue independently, then if some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them."

Cooley Const. Lim. * *p. 179.*
Allen vs. Louisiana 103 U. S. 80.

This Court in the Allen case, Supra, p. 84, says: "The point to be determined in all such cases is whether the unconstitutional provisions are so connected with the general scope of the law as to make it impossible, if they are stricken out, to give effect to what appears to have been the intent of the legislature."

While it may be within the protective power of the State to secure its citizens from injury arising from false weights, grades, and dockage of grain, purchased by private warehousemen at their

warehouses not used for the storage of grain, and to enact a law for that purpose, containing provisions appropriate to that class of warehouses, the legislature in enacting the Act in question has done nothing of the kind, has proceeded on no such principle. The general purpose of the legislature in enacting the Act in question, manifestly was to bring, as far as possible, the country elevators and warehouses of the State, situate at "non-terminal points" as distinguished from "terminal points," so-called, under state regulation. The "terminal points," or places in the State were Minneapolis, Duluth, St. Paul and St. Cloud, places where terminal elevators had been established under an existing law; all other places in the State where elevators or warehouses were situated were non-terminal points, so-called. It was a matter of fact, that many of the country elevators and warehouses, situated at non-terminal points, were situated at railway stations, or sidings (side tracks not at stations), and on railway right-of-way, or other lands acquired, and reserved by railroad companies, to be used in connection with their lines of railway. The principle upon which the legislature proceeded to bring the non-terminal country elevators and warehouses, under State regulation, and in enacting the Act in question, was this: To place in a separate and distinct class *all* country elevators and warehouses, used for handling grain, whether used for the storage of grain for others than the owner or not, situated on railway right-of-way or other lands used by railway companies in connection with their railway lines, at stations or sidings which were not terminal points (Sec. 1, of Act); and then *to open* all elevators and warehouses belonging to such class to *public use*, by requiring those operating them to *receive* into the same without discrimination, *grain for storage* or shipment, upon request and delivery *of any person*, and to hold and store such grain, and to issue warehouse receipts therefor to the depositors, which should contain a written contract binding the warehousemen, among other ways, to deliver such grain to the depositor, either at the place of

storage, or *at any terminal point the depositor* may designate, on the same line of railway, where State inspection and weighing were in force, subject to freight charges. (Sec. 4 of Act.) The right of the State to open for public use, and to regulate by law all elevators and warehouses belonging to such class was predicated alone upon the fact, that they were situated on railway right-of-way, or other lands used by railways in connection with their railway lines. This fact was the basis of the classification, and the basis of the right of public control claimed by the legislature. Such was the principle proceeded upon. It clearly appears on consideration of the Act as a whole, and especially of the provision of Sections one, and four. It is the central idea of the Act. On it the Act was built up. To give it force and effect, by enabling the State to ascertain and classify the country elevators and warehouses of the State, to force them and their business open to State inspection and supervision, to protect the public from injury, and imposition, as to rates and charges, grades, dockage and weight, and to enforce penalties provided, the different provisions of the Act were formulated. By these provisions a license is required to enable State officials to ascertain and classify, under the Act, country elevators and warehouses (Sec. 1); rates of charges for handling and storing grain are to be fixed, and rules and regulations, binding and having the force of law, to be promulgated by the Commission (Sec. 3); accounts of all grain handled and stored by the warehouseman, showing weight, grade and dockage are to be kept; grain is, under penalty, to be delivered on demand, and presentation of warehouse receipt, and storage charges; the issuing of warehouse receipts is placed under regulation (Sec. 4); methods for securing correct grades, dockage and weights of grain received for storage or shipment are provided (Sec. 5); methods for dealing with complaints of unfairness as to grades, dockage, and weights, and of discrimination are provided (Sec. 6); written reports, under oath, as to all grain handled or stored, and overages are required to be made by

the warehouseman to the Commission; his warehouse, business, property, books, records, accounts, papers and proceedings are to be submitted to inspection and examination by the Commission (Sec. 7); pooling of earnings or business of competing elevators and warehouses is prohibited (Sec. 8); penalties for violating the provisions of the Act are provided (Sec. 9); to receive, or ship, or store, or handle any grain in an elevator or warehouse of the designated class is made unlawful, unless the warehouseman, on written application, under oath, procures a license so to do from the Commission, and pays one dollar per year therefor; while the warehouseman, by the very act of procuring such license, "shall be held to have *accepted* the provisions of the Act, and thereby to have *agreed* to comply with the same." These various provisions referred to, it is submitted, are by fair intendment ancillary to those main provisions of sections one and four, embodying the central idea of the Act, the principle on which it is founded. They are necessary to give effect to those main provisions; to enable the State, after it has forced open to public use all elevators and warehouses within the designated class, to keep an eye on their business, and to protect the public that uses them. They are inseparably connected with those main provisions as means, and instrumentalities for their effective enforcement, and for securing the public safety on their enforcement. They and those main provisions are connected and interdependent, and constitute a system of rules and regulations applicable as a unit to all elevators and warehouses belonging to the class created by the act. Severance of the provisions of the Act is in the main impossible. Take for instance the provisions of Section four, as to compulsory storage of grain for others, and delivery at a place other than that of storage; and the provisions of Section one, making the place of location of an elevator or warehouse, on railway right-of-way or railway lands, sufficient to charge it with a public interest,—provisions invalid, as we contend, so far as the case at bar is concerned. Sever these provisions from the Act,

and it is destroyed; its central idea is cut out. The remaining ancillary provisions could not stand; they would be without support. In the words of the opinion in the Allen case Supra: "The unconstitutional provisions are so connected with the general scope of the law as to make it impossible, if they are stricken out, to give effect to what appears to have been the intent of the legislature."

In determining the intent of the legislature, the principle upon which it proceeded in enacting the Act in question, a brief reference to the grain and warehouse legislation of Minnesota may be helpful.

Prior to the year 1885,our state legislature had enacted Chap. 57, Gen'l Laws 1864; Chapter 19, Gen'l Laws 1870; Chapter 25, Gen'l Laws 1871; Chapter 31, Gen'l Laws 1874; Chapter 86, Gen'l Laws 1876; Chapter 73, Gen'l Laws 1879; and that most singular Act, Chapter 99, Gen'l Laws 1879, creating the "Farmers' Board of Trade." Each of said Acts concerned, in one way or another, the handling, storing or warehousing of grain, and was a police regulation in the exercise of the protective power of the state to secure the general safety. Minnesota Territory and State originally produced very little grain. Its people largely brought into the State the wheat and flour they used. When its soil was found to be especially adapted to wheat culture, the production of wheat and other small grains increased rapidly as the State grew in population. In a comparatively few years the production of grain in the State had increased to tens of millions of bushels a year, and had become one of the chief products of the State. Until the year 1885, the State had no comprehensive grain and warehouse law. The Acts passed had been fugitive and incomplete. Something more was needed. In the year 1885, the Minnesota legislature enacted Chapter 144, Gen'l Laws 1885. This was an Act entitled: "An Act to regulate warehouses, inspection, weighing and handling of grain." It was very comprehensive in its provisions, which were similar to, and presumably modeled largely after those of the

Illinois Act of 1871, above referred to. Said Chapter 144, Gen'l Laws 1885, applied only to what are called terminal elevators, or warehouses, being those situated in the cities of Minneapolis, St. Paul and Duluth. It declared all elevators, and warehouses situated in Minneapolis, St. Paul and Duluth, in which grain is stored in bulk, and in which the grain of different owners is mixed together, or is stored in such manner that the identity of different lots or parcels cannot be preserved, and doing business *for a compensation*, to be public warehouses, and required the owners of the same to pay a fee to, file a bond with, and receive a license from the State Railroad and Warehouse Commission before operating such warehouses, imposing a penalty for doing business without a license. The Minnesota Act of 1885, like the Illinois Act of 1871, was a police measure by its terms, regulating the receiving, shipping, handling and storage of grain *for the public, for others, and "for a compensation."* Also in the year 1885, the Minnesota legislature passed an Act, Chapter 188, Gen'l Laws 1885, creating the Railroad and Warehouse Commission, and, in the year 1891, by Chapter 99, Gen'l Laws 1891, made the provisions of Chapter 144, Gen'l Laws 1885, apply to St. Cloud, Minnesota, making it a terminal point. In 1893, the Minnesota legislature enacted Chapter 28, Gen'l Laws 1893. The Act is entitled: "An Act to regulate the receiving, storage and shipment of grain at elevators and warehouses *on the right-of-way of railroads*, in the State of Minnesota, at stations and sidings other than at terminal points." By this Act the legislature sought to regulate non-terminal elevators and warehouses, that is, elevators and warehouses in this State situated on any railroad right-of-way, at any place other than Minneapolis, St. Paul, Duluth and St. Cloud. The Act embraced *all* elevators so situated, "*in which grain is stored and handled;*" declared such elevators and warehouses to be public and known as "public country elevators, or country warehouses, placed the same under the supervision of the State Railroad and Warehouse Commission, and re-

quired the owners of such elevators and warehouses to pay a fee of one dollar to, and procure a license from, the State Railroad and Warehouse Commission before they could lawfully operate the same. In 1891, the State of North Dakota had passed an Act entitled: "AnAct to regulate grain warehouses, and the weighing and handling of grain, and defining the duties of the Railroad Commissioners in relation thereto," being Chapter 126, Laws of North Dakota, 1891. The operation of this Act was not local, but applied to all elevators or warehouses, wherever situated throughout the State, erected and operated for the purpose of "buying, selling, storing, shipping or handling of grain "*for profit*," and declared the same to be "public warehouses," and those who owned and operated them, "public warehousemen." Chapter 28, General Laws of 1893, contained many provisions similar to this North Dakota Act of 1891, and was no doubt modeled after it in part. The North Dakota Act applied to "all buildings, elevators or warehouses in this State," erected and operated for the purpose of "buying, selling, storing, shipping or handling grain *for profit*," whether they were situated on railroad right-of-way, or other railroad land, or in any other place. The Minnesota Act, Chapter 28, General Laws 1893, applied only to elevators and warehouses "in which grain is stored and handled," "situate on the *right-of-way* of *any railroad*, at any station or siding in this state other than at terminal points." Only such country elevators and warehouses, so situated, did our legislature seek to regulate by public law. It is to be noted that in this Act the legislature dropped the words: "for a compensation," found in the Minnesota Act of 1885, and in the Illinois Constitution and Act, and did not use the words "for profit," found in the North Dakota Act, but inserted the words: "situate on the right-of-way of any railroad," etc., not found in any of said Acts. In this the Minnesota legislature seems to have made a new departure, and to have intended to regulate elevators and warehouses so situated, whether the grain stored or handled therein was stored or handled for other

persons, for a compensation, or belonged to the owners of such elevators or warehouses, and was stored and handled by them for their own private use and benefit. The legislature seems to have conceived the idea, that a *certain place of location* of an elevator, or warehouse could be made a determining factor in declaring it to be a public elevator or warehouse, without regard to whether it was operated for the use of the public or not. Said Act of 1893, was similar in its provisions to the Act of 1895, in question, which repealed it. The following differences may be noted: The words: "Depot grounds, and other lands used in connection with such line of railway," are added to the title of the Act of 1895, and are not contained in the title of said Act of 1893. The words: "Stored *and* handled" in Sec. 1, said Act of 1893, are changed to read, "received, stored, shipped *or* handled" (in the disjunctive) in Sec. 1, Act of 1895. The words: "Depot grounds, or any lands acquired or reserved by any railroad company in this State, to be used in connection with its line of railway," found in Sec. 1, said Act of 1895, are not contained in said Act of 1893. The remaining provisions of the two Acts are substantially similar, both providing for compulsory storage, and delivery at terminal points, when demanded, there being some difference in the provisions as to such delivery. It is to be noted that the Act of 1895 includes elevators and warehouses situated not only on railway right-of-way, but on other railway lands; elevators and warehouses in which not only grain is "stored *and* handled," but in which grain is "received, stored, shipped *or* handled." The Act of 1895 is broader than that of 1893, and for that reason may have been enacted. Both Acts were enacted to bring non-terminal, country elevators, and warehouses within State regulation. The legislature proceeded upon the same principle in both Acts, and based its right to open for public use, and regulate all elevators, and warehouses, embraced within the class designated, solely on the fact, that they were situated on railway right-of-way, or other railway lands used by railways,

in connection with their lines. The legislature, we conceive, based their right to place non-terminal, country elevators, and warehouses under State regulation upon certain decisions of the Courts, and particularly in the case of Brass vs. Stoeser, 153 U. S. 391, decided in 1894, which declared the North Dakota Act of 1891, above referred to, not unconstitutional, because it was applicable to the entire State, which was agricultural, and was not restricted to large cities. The legislature, we conceive, were emboldened to base their right to regulate non-terminal, country elevators, and warehouses on the strange and novel ground declared in the Acts of 1893, and 1895, upon certain decisions of the Minnesota Courts, holding that in Minnesota, grain elevators and warehouses are connecting links in the chain of transportation, between farm wagons and railway cars, for the transportation of grain, and as such are a practical necessity in the transfer of grain from producer to consumer; that their use in facilitating the handling, storage, and transportation of the products of the State is a public use, and subject to legislative control; that the use of a portion of a railroad right-of-way for a grain elevator site is a use directly in aid of the public purposes for which the land was acquired by the railway company under its right of eminent domain. Gurney vs. Elevator Co., 63 Minn. 70; Stewart vs. Gt. Northern Ry. Co., 65 Minn. 515. These decisions of the Minnesota Supreme Court were rendered, after both the Acts of 1893, and 1895 became law, but they announced what had been the law of the State before either of said Acts were passed. We do not assume, or concede, that the law, as declared in either of these decisions, can rightly be made a basis of State regulation of warehouses, on the ground declared in said Acts. We only refer to the decisions as a possible source of the novel ground of right of State regulation declared in those Acts. Moreover, by adopting the basis of State regulation declared by those Acts, the Minnesota farmer, who ever gets the ear of the legislature in grain and warehouse legislation, would be greatly benefited. Many private ele-

vators and warehouses, like defendant's, used exclusively to handle the sole grain of the warehouseman purchased outright of the farmers, and not for storing, and handling grain for the public, would be changed into public storehouses. Thus in new districts where barns and granaries for holding grain in store are few, storage houses would be opened for the farmers where they could deposit their grain in store, and hold it until the markets warranted its sale. These, and other like considerations had, we doubt not, much weight with the legislature in inducing it to pass the Act of 1893, and the broader Act of 1895.

We submit that the legislature intended by the Act of 1895 to make *all* elevators and warehouses, falling within the purview of the Act, whether used for the storage of grain for others or not, public elevators, and subject to *all* the provisions of the Act; and that those provisions are so connected that all must fall, if a part only are unconstitutional and void, as applied to the facts of this case.

5.

The mere fact, that an elevator or warehouse, not used for receiving, storing or handling grain for others than the owner, is situated on railroad right-of-way, depot grounds, or land acquired by a railroad company for railroad purposes, at one of its stations, or sidings, does not make the use and operation of such elevator or warehouse, so situate, a proper or legitimate subject for police regulation, or give the State the right to require a license for its operation, to declare it a public elevator or warehouse, to be subject to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to the provisions of said Act.

As above argued, the criterion, whether a law is enacted in the legitimate exercise by the State of its police power, is: Does

the law in any reasonable way secure, or help to secure the safety of the people of the State generally? Does it reasonably protect, or help to protect the State, or its citizens, against human wrong doing and physical danger? If it does, then the State in enacting such law has acted within the limits of its police power; if it does not, then the State has not acted within the limits of its police power. To place a private warehouse on a railroad right-of-way does not make it any part of a railroad, or its operation any part of the operation of a railroad; it is a private warehouse still, and the rights and duties of its owner must be those arising from his relations to the State and the public as a *warehouseman*. The mere fact that the warehouse or elevator is located on or off railway land, used in connection with a line of railroad, is one wholly irrelevant in determining the power of the State to regulate by law the use of such an elevator or warehouse so situated. It is not the elevator or warehouse itself, that the State may control and regulate, but only its *use*, and *operation*. The State's power to regulate such use and operation is limited, reasonably to protecting itself, or its citizens against any human wrong doing, or physical danger that may arise from such use and operation. Within the limits of such protective power, and those prescribed by the constitution, the State may regulate the use and operation of an elevator or warehouse, by enacting laws protective of its citizens, the public at large, whose grain is stored and handled therein, and to whose use the elevator or warehouse is thereby devoted. Here the power of the State to regulate by law the use of an elevator or warehouse, belonging to a private corporation or individual, begins and ends. The mere fact that it is located on or off the right-of-way of a railroad company, whose cars may be employed to transport to the market the grain shipped from such elevator and warehouse, can in no wise increase or diminish the State's power to regulate by law the use of the same. The attempt of the Minnesota legislature, by the said Act of 1893, and the Act of 1895, here in question, to make the fact

of the location of an elevator or warehouse, operated by a private corporation or individual, upon railroad land devoted to a public use, the determining factor as to whether such elevator or warehouse is "public," and its use and operation subject to legislative control and regulation, has, so far as we are aware, no legislative parallel.

Mr. Justice Field in his dissenting opinion in the Munn case, (94 U. S. 113, 138), said: "The receipt and storage of grain in a building erected by private means for that purpose does not constitute the building a public warehouse. There is no magic in the language, though used by a constitutional convention, which can change a private business to a public one, or alter the character of the building in which the business is transacted. A tailor's or a shoemaker's shop would still retain its private character, even though the assembled wisdom of the State should declare, by organic act, or legislative ordinance, that such a place was a public workshop, and that the workmen were public tailors or public shoemakers. One might as well attempt to change the nature of colors by giving them a new designation. The defendants were no more public warehousemen, as justly observed by counsel, than the merchant who sells his merchandise to the public is a public merchant, or the blacksmith who shoes horses for the public is a public blacksmith; and it was a strange notion that by calling them so they would be brought under legislative control." So here. The notion of the Minnesota legislature, that an elevator belonging to a private corporation, situated on railroad right-of-way, can be brought under legislative control by calling it a public elevator, whether devoted to a public use or not, is "a strange notion."

6.

The provision of Section 4, of said Act, above referred to, making it compulsory upon a warehouseman to store and handle grain for others, is unconstitutional, and void, and especially as applied to the facts of the case at bar, under said clause as to due process of law.

In regard to Chapter 126, Laws of North Dakota, 1891, referred to supra, this Court said:

"Another argument advanced is based on the admitted allegation that the principal business of the plaintiff in error, in connection with his warehouse, is in storing his own grain, and that the storage of the grain of other persons is and always has been a mere incident, and it is said that the effect of this law will be to compel him to renounce his principal business and become a mere warehouseman for others. We do not understand this law to require the owner of a warehouse, built and used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profit. Then he becomes subject to the statutory regulations, and he cannot escape them by asserting that he also elevates and stores his own grain in the same warehouse."

Brass vs. Stoeser, 153 U. S. 391, 404.

See also case cited below under provision as to compulsory delivery at terminal points.

Again, the provision of section 4, of said Act, above referred to, requiring the warehousman, upon request of the depositor of grain for storage or shipment, to deliver to him a warehouse receipt therefor in favor of such person, which "shall also state upon its face that the grain mentioned in such receipt, or receipts has been received into store * * * and that upon the return of said receipt, or receipts, and upon the payment or tender of payment of all lawful charges for receiving, etc., said grain, * * * such grain is deliverable, * * * if the owner so desires in quantities not less than a carload on track, on the same line of railway, at any terminal point in this State, which the owner may designate, where State inspection and weighing is in force," etc., is unconstitutional and void, and especially as applied to the facts of this case, under said clause as to due process of law.

In support of the above proposition, and without further argument, we cite the following authorities:

"If the legislature should undertake to provide that persons following some specified lawful trade or occupation, or employment

should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the Act would transcend the due bounds of legislative power. * * * "

Cooley's Con. Lim. 5th Ed. p. 486.

"The liberty mentioned in that amendment (14th Amendment) means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential, to his carrying out to a successful conclusion the purposes above mentioned."

Allgeyer vs. Louisiana, 165 U. S. 578, 589.

"The main proposition advanced by the defendant is, that his enjoyment upon terms of equality, with all others, in similar circumstances, of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property, is an essential part of his rights of liberty and property as guaranteed by the 14th Amendment. The Court assents to this general proposition as embodying a sound principle of constitutional law."

Powell vs. Pennsylvania, 127 U. S. 678, 684.

See also opinions of Mr. Justice Field, and Mr. Justice Bradley, in *Butchers' Union S. H. & L. S. L. Co. vs. Crescent City L. S. L. & S. H. Co., 111 U. S. 746.*

"Liberty as we have seen, includes the right to contract as others may; and to take that right away from a class of persons following lawful pursuits is simply depriving such persons of a time-honored right which the Constitution undertakes to secure to every person."

State of Mo. vs. Loomis, 115 Mo. 307, 316.

In the above case a law prohibiting those engaged in manufacturing and mining from issuing in payment of wages to labor-

ers any order, check, etc., payable otherwise than in money, was held void.

See also State vs. Goodwill, 33 W. Va. 179.
State vs. Coal Co., 33 W. Va. 188.

In *Goodcharles vs. Wigeman, 113 Pa. St. 431*, a similar law was held void, and the court said: "They are utterly unconstitutional and void inasmuch as by them an attempt has been made by the legislature to do what in this country cannot be done; that is, prevent persons who are *sui juris* from making their own contracts."

In *Commonwealth vs. Perry, 28 N. E. Rep. 1126*, a statute which provided that no employer should impose a fine upon an employee engaged in weaving for imperfections in weaving was held void as an interference with the right to make reasonable and proper contracts in conducting a legitimate business.

In *Millett vs. People, 117 Ill. 294*, a law providing that all coal mined in the State should be weighed on scales provided by the mine owner was held void.

In *Frorer vs. People, 31 N. E. Rep. 395*, a law which prohibited mine owners and manufacturers from keeping "truck stores" was held void.

In *State vs. Scougal, 51 N. W. Rep. 858*, a law which prohibited any one from engaging in the banking business without first forming an association as provided was held void.

In *Ramsey vs. People, 17 L. R. A. (Illinois) 853*, a law requiring wages of coal miners, if based on the quantity of coal mined to be computed on the whole quantity mined before the coal was screened, was held void.

In *People vs. Gillson, 109 N. Y. 389*, a law which prohibited any person who sells food from giving away therewith anything as a gift, was held void.

In *West Virginia vs. Coal Co., 6 L. R. A. (W. Va.) 359*, a law prohibiting persons engaged in mining and manufacturing from selling merchandise to their employees at a greater profit than to others was held void.

Without further statement of the nature of the cases we cite the following in each of which statutes interfering with the liberty of contract were held void:

In re Jacobs, 98 N. Y. 98.
Ritchie vs. People, 155 Ill. 98.
Dennis vs. Moses, 18 Wash. 537.
Harding vs. People, 160 Ill. 459.
Braceville Co. vs. People, 147 Ill. 66.
State vs. Julow, 129 Mo. 163.
A. T. & S. F. Ry. Co. vs. Campbell, 48 L. R. A. 251.

In speaking of the police power this court has said: "The legislature may not under the guise of protecting the public interests arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."

Lawton vs. Steele, 152 U. S. 133, 136.

We claim also that the provisions of Section seven, of said Act, requiring the warehouseman to submit his warehouse, property, books, records, accounts, papers and proceedings to the Commission for inspection are invalid as applied to the case at bar, on the same constitutional grounds, among others, above stated. We make the same claim in regard to the provisions of Section four, as to the compulsory order and time of delivery of grain, and issue of certificates therefor. Other provisions might be referred to, but we pass these questions by mere reference to them, and without further argument thereon.

"Due process of law" may be thus defined: Whatever in the regular administration of law in a State is general, and impartial in its operation on *all* persons, is due process of law.

Caldwell vs. Texas, 137 U. S. 692.
Walker vs. Sauvinet, 92 U. S. 90.
Hurtado vs. Cal., 110 U. S. 516.

POINT II.

Said Act (Ch. 148 G. L. Minn. 1895) is repugnant to Section one, of Article fourteen of the amendments to the Constitution of the United States, providing that no State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws, and is unconstitutional, illegal and void, and especially in so far as said Act attempts to declare elevators and warehouses, in which only the grain of the declare elevators and warehouses, n which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor. (Specification of Errors Nos. 4 and 6 Supra; Trans. p. 8.) The discussion of this point involves the discussion of the following question:

The fact that said Act applies only to elevators and warehouses situated on railroad right-of-way, depot grounds, or land acquired by a railroad company for railway purposes, at one of its stations or sidings, renders the Act invalid, and especially so as applied to the facts of the case at bar, as denying to owners of such elevators, and warehouses, and especially to this plaintiff in error, the equal protection of the laws.

1. The clauses of the 14th Amendment in question under the present and preceding points apply as well to corporations as to individual persons.

Pembina Mining Co. vs. Pennsylvania, 125 U. S. 181.
Gulf, etc., Ry. Co., vs. Ellis, 165 U. S. 150.

2. These clauses apply to persons, and not citizens, i. e., persons, whether they be citizens or not citizens. Every person, whether a citizen or not, and no matter where residing, is protected by these clauses against any action by the State, which will deprive him of life, liberty or property, without due process of law, or deny to him the equal protection of the laws.

Yick Wo vs. Hopkins, 118 U. S. 356.

3. Said clause, as to the equal protection of the laws, is a limitation upon State power prohibiting, and rendering invalid State legislation, that does not treat *all persons* subject to legislation *alike, under like circumstances and conditions*, both in the privileges conferred, and the liabilities imposed.

"The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that *all persons* subjected to such legislation shall be *treated alike under like circumstances and conditions*, both in the privileges conferred and the liabilities imposed."

Hayes vs. Missouri, 120 U. S. 68, 71.

"It (said clause as to equal laws) has respect to *persons* and *classes* of persons. It means that no person or class of persons shall be denied the *same protection* of the laws which is enjoyed by *other persons* or *other classes* in the *same place and under like circumstances*."

Missouri vs. Lewis, 101 U. S. 22, 31.

"The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process

of law, or deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no *arbitrary* deprivation of life or liberty, or *arbitrary* spoliation of property, but that *equal* protection and security should be given to *all* under *like circumstances* in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness, and acquire and enjoy property; * * * that no impediment should be interposed to the pursuits of any one *except as applied to the same pursuits by others under like circumstances;* that no greater burdens should be laid upon one than are laid upon others in the *same calling* and *condition.*"

Barbier vs. Connolly, 113 U. S. 27, 31.

"The inhibition of the amendment, that no State shall deprive any person within its jurisdiction of the equal protection of the laws, was designed to *prevent* any person or class of persons from being *singled out* as a *special subject* for *discriminating* and hostile legislation."

Pembina Mining Co. Case, Supra, 188.

"Class legislation discriminating against some and favoring others is prohibited."

Barbier Case, Supra, p. 32.

Again, the inhibition of said clause, as construed in the leading cases above cited, being directed to State legislation, that does not treat all persons subject to legislation "alike, under like circumstances and conditions," as to privileges conferred and liabilities imposed, State legislation that does so treat all such persons is not so inhibited. From the requirement of like treatment to all under like circumstances and conditions, State legislation may accordingly, within said clause, group and classify persons subject to legislation with reference to this requirement. But the classification must fairly meet the requirement. The "like circumstances and conditions" with reference to which classification is made, though common to all persons within the class, must not be irrelevant, immaterial and arbitrarily selected without reference to the pur-

poses of the legislation. The legislation, if such is the case, will fall within the inhibition of said clause. If such is not the case, it may not. Accordingly State legislation imposing upon a certain class of persons in the State special duties, and burdens not resting on the general public, is within the inhibition of said clause, if the classification is unreasonable and arbitrary, or based upon matters which have no reasonable relation to the object sought to be accomplished. This is true even if the law deals alike with all persons of the designated class. Whether or not the classification is warranted or permissible under said clause is a judicial question.

"The equal protection of the laws which is guaranteed by the Fourteenth Amendment does not forbid classification. That has been asserted in the strongest language. Barbier vs. Connolly, 113 U. S. 27. * * * This declaration has, in various language, been often repeated, and the power of classification upheld, whenever such classification proceeds upon any difference which has a *reasonable relation* to the object sought to be accomplished. * * * On the other hand, it is also true that the equal protection guaranteed by the constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney's fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. *Even where the selection is not obviously unreasonable, and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed.* Yick Wo vs. Hopkins, *supra*. forcibly illustrates this. In that case a municipal ordinance of San Francisco, designed to prevent the Chinese from carrying on the laundry business, was adjudged void. This Court looked beyond the mere letter of the ordinance to the condition of things as they existed in San Francisco, and saw that, under the guise of regulation, any arbitrary classification was intended and accomplished. * * * It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. * * * Indeed, the very idea of classification is that of inequality, so that it goes without saying

that the fact of inequality in no manner determines the matter of constitutionality."

Atchison etc. Ry. Co. vs. Matthews, 19 Sup. Ct. Rep. 609, 612, 613.

"Yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorneys' fees of parties successfully suing them, and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears *a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily, and without any such basis.* * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights, which is the foundation of free government. * * * It is apparent that the *mere fact* of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some *reasonable ground*,—some *difference which bears a just and proper relation to the attempted classification*, and is not a mere arbitrary selection."

Gulf etc. Ry. Co. vs. Ellis, 165 U. S. 150, 155, 159, 160, 165.

"Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a clasification for some purposes furnish no reason whatever for a classification for legislative purposes. *The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations.*"

State vs. Loomis, 115 Mo. 307, 314.

Smyth vs. Ames, 169 U. S. 466, 526.

Lawton vs. Steele, 152 U. S. 133, 137.

Again, while said clause, as to equal laws, was not intended to interfere with the power reserved to the States to enact police legislation to secure the general safety, yet state police legislation is not excepted from the requirements of said clause. It "requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed," whether the State legislation be in the nature of a police regulation or not. Accordingly the same rules of classification above stated apply to such legislation. The classification must not be unreasonable or arbitrary, or based upon matters having no reasonable relation to the objects sought to be accomplished.

"But neither the amendment (Fourteenth Amendment)—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. * * * Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint *if they operate alike upon all persons and property under the same circumstances and conditions.* Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, *if within the sphere of its operation it affects alike all persons similarly situated,* is not within the amendment."

Barbier vs. Connolly, 113 U. S. 27, 31, 32.

Missouri Pacific Ry. Co. vs. Mackey, 127 U. S. 205, 209.

4. The Act in question (Ch. 148 G. L. Minn. 1895), Sec. 1, places "all elevators and warehouses, in which grain is received, stored, shipped *or* handled, and which are situated on the right-of-way of any railroad, depot grounds, or any lands acquired or reserved by any railroad company in this State to be used in connection with its line of railway, at any station or siding in this State, other than terminal points," and the owners of such elevators

and warehouses, in a separate and distinct class, and by the other provisions of said Act imposes special duties and burdens on this class, and its members not imposed on persons not included. This classification works inequality, but, in the language of this Court, above quoted, "the very idea of classification is inequality," and "the fact of inequality in no manner determines the matter of constitutionality." In this matter, under the constitutional requirement of equal laws, as interpreted by this Court in the cases cited above, we claim in regard to this Act as follows:

(1) In so far as the Act applies to all elevators and warehouses, whether used for storing and handling the grain of others, or not, it is invalid, because it does not treat all persons subject to legislation, owning and using elevators, and warehouses in the State, at other than terminal points, *alike, under like circumstances, and conditions*, in the liabilities imposed. It does not fairly meet the requirement of like treatment to all, under like circumstances and conditions. The "like circumstances and conditions," with reference to which classification is made, and common to all within the class, (those regarding use aside), concern the places of location of the elevators and warehouses of the class, the situation, ownership, and use of the lands they occupy, or the use for which such lands were acquired and reserved. These facts and circumstances are irrelevant and immaterial, and are arbitrarily selected by the legislature without reference to the purposes of the Act. The classification is "based upon matters which have no relation to the object sought to be accomplished," by the Act, and is "unreasonable and arbitrary."

The object sought to be accomplished by the Act should, under the law, be to secure from human wrong doing the general safety, the safety of the public generally, of the whole people of the State, who use, or require for use non-terminal country elevators, and warehouses for storing and handling their grain. To justify the State, under its police power, to interpose its authority on behalf of

the public, it must appear that the interests of the *public generally*, as distinguished from those of a particular class, require such interference.

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. * * * To justify the State in thus interposing its authority in behalf of the public it must appear, first, that the interests of the *public generally, as distinguished from those of a particular class*, require such interference; and, second, that the *means* are *reasonably necessary* for the *accomplishment* of the *purpose*, and not *unduly oppressive upon individuals*. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual, and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the Courts."

Lawton vs. Steele, 152 U. S. 133, 136, 137.

In enacting the Act the State exercised its protective power to secure not the general safety, but the safety of that particular class, using or requiring for use only non-terminal elevators or warehouses, situated in certain named places, for handling their grain. Certainly the interests of the public generally, as much as those of this particular portion of the public required State protection, if that were required at all. If the object of the Act was to secure the general safety, it fails in its object, and bears no reasonable relation to the object sought to be accomplished. If the object of the Act was to secure the safety of a particular class only, as distinguished from that of the public generally, no reason appears for the State's interference, and it is without authority. The classification is based upon matters having no relation to the object sought to be accomplished by the Act.

That the classification is arbitrary, unreasonable and unjust is also apparent. It places special duties, and burdens, not on all warehousemen in the State, who operate non-terminal, country elevators and warehouses for storing or handling grain for others,

as well as themselves, or for themselves alone, but on a particular class of such warehousemen only. The warehousemen included in this class, and those excluded, may own exactly similar elevators, and warehouses constructed in exactly the same way; may operate them, store or handle the same kind of grain in them, in the same way, for persons, members of the same neighborhood or community; may charge the same rates for storing or handling; may treat their patrons in the same fair, and honest way. The elevators or warehouses of those included in this class may be just within the line of a certain railroad right-of-way, and those of the warehousemen not included may be just outside that line, but so near to it they can be used in connection with the same railroad, its tracks and cars, with the same facility as those within the right-of-way line; or the warehousemen not included in the class may connect their elevators or warehouses with the railroad by private track, or in other ways, thus giving the public the same warehouse facilities, no greater or less, as the warehousemen within the class. Yet, by the provisions of this Act, the warehousemen included in this class cannot do business without procuring a license and paying one dollar each year for it, and without agreeing to accept and be bound by all the provisions of the Act; can only charge the public such rates for the use of their elevators and warehouses as the Commission may fix; are bound by, and must obey, under penalty, its rules and regulations; must receive, without discrimination, for storage or shipment, all grain offered; must deliver it to the depositor at terminal points if desired; must issue warehouse receipts containing, among other things, an agreement to make delivery at such points; must deliver grain within a limited time, under penalty; must make written reports, under oath, to the Commission, of all grain stored or handled; must submit their elevators or warehouses, property, books, records, accounts, papers and proceedings, to the Commission for inspection. These are some of the special burdens placed upon them, although they stand in the same place, and under like circumstances

and conditions as the warehousemen not included in the class.

If the classification had included only elevators or warehouses painted red or white, or operated by horse power, or electric power, or situated *off* from railroad right-of-way, or other railroad lands, would the law be one tending to secue the safety of the public *generally*, or only of a *particular class* who might use such elevators or warehouses? Would the State be justified in enacting such a law on the plea of interposing its authority on behalf of the general public? Would not the classification be based on circumstances and conditions having no relation to the object sought to be accomplished, i. e., the safety of the whole people of the State, who use non-terminal country elevators or warehouses? Could such a law be said to be "the means reasonably necessary for the accomplishment of such a purpose and not unduly oppressive upon individuals?" Would not such classification be unreasonable and arbitrary? And yet, how would it substantially differ from the one in the Act in question?

The classification in the Act in question is not only made without reference to the purposes of the Act, but it is discrimination, arbitrary and unreasonable, and is "unduly oppressive upon individuals."

(2) In so far as the Act applies to elevators or warehouses used for storing and handling only the warehouseman's own grain, it is invalid for the reasons above stated, that it arbitrarily discriminates against warehousemen included in the designated class, as compared with those not included, and for the additional reason, that it arbitrarily discriminates against members of the class itself, and does not treat all persons alike included in the class. Warehousemen, using their elevators or warehouses for storing or handling only their own grain, are subjected to greater burdens than those whose elevators and warehouses are already devoted to storing, or handling grain for others. The elevators and warehouses of the former are, by the provisions of the Act, forced open to public

use; their private business interfered with, and, it may be, destroyed. These are burdens not placed by the Act upon warehousemen included within the class whose elevators and warehouses are already devoted to the public use. The Act classifies, and then does not operate equally upon all members of the designated class.

(3) Even if the Act is susceptible of the interpretation given it by the Minnesota Supreme Court, that it is a police regulation to secure to the public correct weights, grades, and dockage of grain, applicable to elevators and warehouses not used for storing or handling grain for others than the owner, it is invalid, because it does not meet the constitutional requirement of like treatment to all under like circumstances and conditions. The same reasons for its invalidity above stated apply.

5. As bearing upon the question under discussion we cite the following cases:

A Maryland statute (Ch. 493 Acts of 1898) provided that it should be unlawful for any officer or director of a railroad or mining corporation, doing business in a certain county, to have any interest in any general merchandise store in that county, or to sell goods, wares or merchandise therein. Held, that such statute is void because in conflict with the Fourteenth Amendment to the Federal Constitution in that it makes an arbitrary and unreasonable classification of the persons who may sell goods, wares and merchandise. The Court, by McSherry, C. J., said: "A statute which denies to one person the protection that is accorded to others under the same conditions and in like situation, or which imposes on one a burden not similarly borne by others, is because it so discriminates, in both instances, invalid under the paramount organic law. * * * Whilst the legislature may, under conditions, create classes, and subject all persons coming within the classification to burdens or duties not imposed upon individuals outside of the classes, these classifications must not be arbitrary or unreasonable, but must rely upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed."

Luman vs. Hitchens Bros. Co., 90 Md. 14-25. (1899).

A Missouri statute whereby bookmaking and poolselling was legalized "on the premises or within the enclosure or limits of a regular race course," and the same acts were declared a misdemeanor if done without such limits or off such premises, was held invalid as not affording all persons the equal protection of the laws and being in conflict with the constitution of the state.

The Court said: "Now it is a rule of long established construction in this state, a rule so well settled that it admits of no contravention,' that a statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons, or things of a class is special.' (Authorities.) In the case last cited it was ruled that while the legislature might legislate in regard to a class of persons, yet that they would not be permitted to take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and thereupon enact different rules for the government of each. This is precisely what has been done in the case at bar; the act bestows protection upon all who ply their calling and reap their financial harvests inside the precincts of a regular race course, and inflicts punishment on all who do likewise outside of those artificial boundaries."

State vs. Walsh, 136 Mo. 400-405. (1896).
State vs. Bliler, 138 Mo. 139.

An ordinance of a county forbade the establishing or enlarging of any cemetery within the limits of the county without first obtaining the consent of the supervisors, but impliedly permitted burials without restriction in cemeteries already established. Held, that such ordinance was unequal in its operation in assuming to limit the unrestricted privilege of burial to one class of citizens and to deny it to another class within the same district, or to make the latter subject to the arbitrary will of the supervisors to grant or refuse the privilege, and was, therefore, unconstitutional and void.

Los Angeles vs. Hollywood Cemetery Assn. 124 Cal. 344. (1899).

A city by ordinance declared it unlawful to stable within the city more than two horses except by persons who had first ob-

tained the permission of the council so to do. Held, that such ordinance is unconstitutional and void because it is in conflict with the Fourteenth Amendment to the Constitution of the United States.

Louisiana vs. Krentz, 47 La. Ann. 106. (*1895*).
Louisiana vs. Mahner, 43 La. Ann. 496. (*1891*).

The Congress of the United States, by Joint Resolution, authorized the Commissioners of the District of Columbia to determine the location, near railway stations, where cabs and carriages might stand, such cab and carriage service to be provided by the railway companies. In pursuance of this resolution, the Commissioners made an order designating certain streets, in front of and adjacent to a railway station, as a place where cabs and carriages might stand, but made such a stand for the exclusive use of the cabs of the railway company. The appellant appealed from a judgment rendered against him and fine imposed for violating said order, in allowing his cab to stand upon the designated streets. Held, that said order was unconstitutional and void as being in conflict with the Fourteenth Amendment in that it denied to the citizens of the District of Columbia the equal protection of the laws.

Curry vs. The District of Columbia, 14 Dist. of Col. App. Cases, 423-438 et seq. (*1899*).

A statute of Ohio provided that before any person might engage in the business of plumbing, he should undergo an examination as to fitness, and obtain a license; but further provided that all members of a firm might pursue such business, when only one member had procured such license, and that all officers of a corporation might pursue the business when the manager thereof only had procured such license. Held, that said statute did not operate equally upon all members of a class pursuing the same calling under like circumstances, and was, therefore, unconstitutional and void.

The Court said: "A statute, therefore, which imposes special restrictions or burdens upon, or grants special privileges to persons engaged in the same business under the same circumstances, cannot be sustained, because it is in contravention of the equal right which all are entitled to in the enforcement of the laws and in the enjoyment of liberty, and in the enjoyment of an equal right in the acquisition and possession of property, and so is not of uniform operation."

State vs. Gardner, 58 Oh. St. 599-610. (*1898*).

A statute of the State of Vermont defined peddlers, and required a license fee to be paid by peddlers who sold goods manufactured in the State, and exacted no license fee of peddlers who sold goods manufactured without the State. Held, that this statute is void as being in contravention of that clause of the Fourteenth Amendment to the Constitution of the United States forbidding the States to deny to any person within their jurisdiction the equal protection of the laws.

The Court said: "The rule on this subject is, that the mere fact of classification is not enough to exempt a statute from the operation of the equality clause of said Amendment, but that in all cases it must appear not only that a classification has been made, but that it is one based upon some reasonable ground, some difference that bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection."

State vs. Hoyt, 71 Vt. 59-64. (*1898.*)

A "Sample Sellers Ordinance," of the City and County of San Francisco, provided, among other things, in substance, that a merchant, whose business it was to sell goods, which at the time of the transaction were not actually within the corporate limits, or in transitu, under a bill of lading, should pay about twenty times more for his license, and his privilege of pursuing his avocation, than another merchant doing business in the same city, and who dealt in the same kinds of merchandise, but who bought and sold only goods which were actually within the corporate limits, or in transitu, under a bill of lading. The Court says: "The discrimination is made to

depend, solely on the fact, that in the one case, the goods are either in the corporate limits or in transitu, under a bill of lading; and in the other case, they are not."

And the Court says in its opinion: "It (the ordinance) is, flagrantly unjust, oppressive, unequal and partial. It discriminates between merchants in the same place, dealing in the same kinds of merchandise, for no better reason than that one deals in goods either actually in the corporate limits, or in transitu, under a bill of lading; while the other deals in goods outside the corporate limits, and not in transitu, under a bill of lading. If this kind of discrimination be legitimate, and valid, there is no reason why a merchant having his goods in a warehouse on a particular street, might not be required to pay a license fee of ten thousand dollars, while another merchant doing the same kind of business in the same city, and with his goods stored in another street, would be required to pay only ten dollars."

Ex parte Frank, 52 Cal. 606, 610, 611.

The City Council of Nashville passed an ordinance, one section of which discriminated between merchants residing within, and without the city. And the Supreme Court of Tennessee says: "This section discriminates between merchants, manufacturers, and other dealers residing without the limits of Nashville, and members of the same classes residing in the City; and assumes to lay down a special rate of taxation for the former class. This certainly cannot be done, and would be equally beyond the authority of either State or the municipal legislature."

Mayor and City Council of Nashville vs. Althorp, 5 Cold. 554, 560.

The Act of the State of Tennessee, of March 30th, (1883), establishing a railroad commission, imposed certain penalties upon railroad corporations, which were not imposed for like conduct upon other persons operating railroads in the State, although the Act professed to regulate both. Held, that said Act was unconstitutional and void, in that it denied to all persons within the State the equal protection of the law.

Louisville & N. R. Co. vs. Railroad Com., 19 Fed. 679.

We cite also:

Magoun vs. Ill., 170 U. S. 283–294, et seq.
Soon Hing vs. Crowley 113 U. S. 703–709.
Missouri etc. R. Co. vs. Humes, 115 U. S. 512–523.

POINT III.

Said Act (Ch. 148 G. L. Minn. 1895) is repugnant to that clause of section eight, article one, of the Constitution of the United States, granting to congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," and is unconstitutional, illegal and void, especially in so far as said Act attempts to declare elevators and warehouses in which is received, stored, shipped or handled only the grain of the owner, solely purchased and placed in the same for the purpose of shipment, and actually shipped from said elevators and warehouses, beyond the boundaries of Minnesota, and into other States, public elevators and warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to pay a license therefor.

The record in this case shows, that on April 16th. 1895, when said Act became a law, and for more than one year prior to that time, plaintiff in error owned, occupied and operated, and has since that time, the warehouse in question; that it is a small building without machinery or mechanical appliances for elevating or handling grain; that all grain is unloaded by hand from wagons, placed in the bins of the warehouse, and thence, either directly and without delay spouted by force of gravity into box cars for direct, and continuous interstate shipment, or delayed in said warehouse only a sufficient time for the accumulation of a full car-load for such shipment; that all grain received into, and handled in said warehouse is

the property of plaintiff in error, which it contracted for, purchased, loads into cars through and by means of said warehouse, for the express purpose of interstate shipment, and actually ships directly, and continuously over the railway line named to its terminal elevators in La Crosse or Green Bay, Wisconsin, or to other places beyond the boundaries of Minnesota; that no grain is, or has been received into, stored, or handled for others in said warehouse, by plaintiff in error, nor has it offered or attempted so to do, or issued or offered to issue any warehouse receipt for any property therein; that the use of said warehouse is, and has been, confined by plaintiff in error solely to handling his own grain purchased for interstate shipment.

Said warehouse is an instrument of interstate commerce. It is not a grain storage warehouse for others, or for the plaintiff in error. It is a medium, an instrument for loading grain into cars for shipment to terminal storage houses in La Crosse or Green Bay, Wisconsin, or to markets beyond the boundaries of Minnesota. All grain received into said warehouse passes immediately and directly through it, as through a spout, into cars, or is held only a sufficient time to secure full car-loads, with no purpose other than that of continuing the shipment within a reasonable time. All such grain has actually commenced its final movement from the State of its origin to the State of its destination. Its interstate transit has begun by a substantially continuous route or journey. Its actual commitment to a common carrier for transportation out of the State to the State of its destination is not essential; it is sufficient if the grain has, through any medium or instrument of transportation, started on its ultimate passage to another State. All grain in said warehouse, on its receipt therein, becomes a part of interstate commerce, ceases to be governed exclusively by State law, and begins to be governed and protected by the national law of commercial regulation.

Coe vs. Errol, 116 U. S. 517.

Again, all grain in said warehouse is purchased, not for the purpose of being stored or held therein, or sold to others, or consumed in Minnesota, but for the express and only purpose of shipment, for storage, to the terminal warehouses of plaintiff in error in Wisconsin, or to markets beyond Minnesota boundaries. For the purpose of putting all such grain in the way of such interstate transit it is placed in said warehouse. It then becomes an *article bought for the purpose of, and put in the way of such transit, and a part of interstate commerce*, and subject to Federal regulation. Interstate commerce does not consist of transportation merely; it includes, among other things, the *purchase* and *sale* of articles intended to be transported from one State to another, and the *articles themselves*. bought for the purpose of such transit, or put in the way of it.

"The regulation of commerce applies to the subjects of commerce, and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation ,and its instrumentalities, and *articles bought, sold, or exchanged for the purpose of such transit among the States, or put in the way of transit*, may be regulated, but this is because they form part of interstate trade or commerce."

United States vs. Knight, 156 U. S. 1, 13, 36.
Mobile County vs. Kimball, 102 U. S. 691.

Again, the orbit of activity of plaintiff in error, in operating said warehouse, touches the general public, the people of the State at one point only, i. e., the purchase of the grain in said warehouse. Even assuming that the State of Minnesota, in the legitimate exercise of its police power, reserved to it under the Federal Constitution, may by legislation provide such rules and regulations as are reasonably necessary to secure to the public correct weights, grades, and dockage, on the purchase of the grain in said warehouse, it can go no further. The State cannot, under the guise of exercising its police power to secure the general safety, exceed in the exercise of that power the limit actually necessary to secure such safety. It

cannot, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose burdens, or unsual and unnecessary restrictions upon the instruments, or subjects, or the carrying on of interstate commerce.

"All that the Federal authority can do is to see that the States do not, under cover of this power (police power), invade the sphere of national sovereignty, obstruct or impede the exercise of any authority which the Constitution has confided to the nation, or deprive any citizen of rights guaranteed by the Federal Constitution."

*Cooley Const. Lim. * page, 574.*

"It (the State) may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce."

Railroad Co. vs. Husen, 95 U. S. 465, 472.
Schallenberger vs. Pennsylvania. 171 U. S. 1, 13.

The Act in question was not intended as, and is not a mere police regulation to secure to the public correct weights, grades, and dockage. It was intended as, and is a system of rules, and regulations for the storage and handling of grain, applicable alike to all elevators and warehouses within its purview.

As applied to the warehouse and business of plaintiff in error, the provisions of said Act affect and bear directly upon the business conducted in said warehouse, its use and operation, and the purchase, the handling, and the shipment of the grain therein. The Act affects, regulates, interferes with, and places a burden upon interstate commerce in the broadest sense of that term.

The Act (Ch. 148 G. L. Minn. 1895) is, as applied to the facts of the case at bar, repugnant to the Federal Constitution in the respects above named. The judgment of the Minnesota Supreme Court in declaring the Act valid as applied to the facts of the case was error. That judgment should be reversed.

Respectfully submitted,

RALPH WHELAN,
Attorney for Plaintiff in Error.

No. 116.

FILED
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JAMES H. MCKENNEY
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES.

OCTOBER TERM, 1900.

Filed Dec. 3, 1900.

NO. 116.

W. W. CARGILL COMPANY,
Plaintiff-in-Error.

vs.

THE STATE OF MINNESOTA, EX REL.,
THE RAILROAD AND WAREHOUSE COMMISSION,
Defendants-in-Error.

BRIEF AND ARGUMENT OF DEFENDANTS-IN-ERROR.

W. B. DOUGLAS, Attorney General, and
W. J. DONAHOWER, Asst. Atty. General,
Attorneys for Defendants-in-Error.

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THE STATE OF MINNESOTA, EX REL., THE RAILROAD AND WAREHOUSE COMMISSION,

Dfendant in Error.

BRIEF AND ARGUMENT ON BEHALF OF DEFENDANT IN ERROR.

Statement.

This is a Writ of Error from a final judgment made and entered in the Supreme Court of the State of Minnesota.

The question involved in this appeal is the validity of Chapter 148 of the General Laws of the State of Minnesota for the year 1895. By this act the State seeks to regulate the receipt, storage and shipment of grain at elevators and warehouses situated on the right of way of any railroad, its depot grounds, or any lands acquired or reserved by any railroad company in this State to be used in connection with its line of railway at any station or siding other than at terminal points.

Such elevators or warehouses are made subject to inspection and placed under the supervision of the Railroad and Warehouse Commission of the State and shall be known and designated as public country elevators or country warehouses.

Briefly stated, the provisions of the act, in so far as they may be made applicable to the business of elevators and warehouses situate upon the right of way of a railroad, depot grounds and other lands used in connection with such line of railroad, at stations or sidings other than at terminal points, which do not receive, handle, store or ship the grain of others for a compensation, are as follows:

Before the business of receiving, storing, shipping or handling grain may be lawfully carried on in any such elevator or warehouse, a license must be first obtained from the said Railroad and Warehouse Commission, which license confers upon the licensee, authority to operate his elevator or warehouse for the period of one year, in accordance with the laws of the State and such rules and regulations as shall be prescribed by said Commission.

The operation of a public country elevator or warehouse without the owner first obtaining such license, is a violation of law and is deemed a misdemeanor of which any party aggrieved may complain; and the said Railroad and Warehouse Commission may institute proceedings in the District Court for the county in which the elevator or warehouse in question is situated, to enjoin their further operation. It is made the duty of the party operating such country elevator or country warehouse, to keep a true and correct account in writing, in suitable books, of all grain received, stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or other cause, on each lot of grain received in store for sale, storage or shipment. Any party selling or delivering grain at any country elevator or country warehouse who is aggrieved by reason of unjust and unfair weights or grades, or unreasonable dockage for dirt or other cause, may make complaint to said Railroad and Warehouse Commission, and it thereby becomes the duty of such Commissioner to inquire into and investigate such complaint and the charge therein contained, and shall have full authority to inspect and examine all the books, records and papers pertaining to the business of such elevator or warehouse, and all the scales, machinery, fixtures and appliances used therein. Parties operating any country elevators or country warehouse, are required to furnish, at the request of said Railroad and Waresouse Commission, an itemized statement of all grain received, stored in, or delivered or shipped from such elevator or warehouse during the year last past, which statement shall specify the kind, grade, gross and net weight, of all grain re-

ceived or stored and all grain delivered or shipped.

It shall be unlawful for any person, firm or corporation, who shall operate any country grain elevator or country grain warehouse under this act, to enter into any contract, agreement, understanding or combination with any person, firm or corporation who shall operate any other country grain elevator or country grain warehouse under this act, for pooling of the earnings or business of other, different and competing grain elevators or warehouses, so as to divide between them the aggregate or net proceeds of the earnings or business of such grain elevators or warehouses or any portion thereof.

There are various other provisions of the act which are applicable only to elevators and warehouses situated upon the right of way of a railroad company, which are engaged in the business of receiving and storing the grain of others for a compensation and issue elevator and storage receipts therefor.

The said W. W. Cargill Company, plaintiff in error, is a corporation organized under the laws of the State of Wisconsin, having its principal office and place of business at La Crosse, in said State, and owns and operates large terminal elevators at various points in said State. Said company also owns and operates a grain warehouse situate upon the right of way of the Chicago, Milwaukee & St. Paul R. R. Co., in the village of Lanesboro in the State of Minnesota, where considerable quantities of grain of various kinds are

marketed, sold and delivered to the said W. W. Cargill Company, and received and handled in its said grain warehouse, and shipped away in cars over said railway line. Said W. W. Cargill Company has never received and stored in this elevator grain except its own. The grain handled by said company at this point was purchased at said warehouse from farmers who had hauled it by wagon from the farms of the county and vicinity to this company for sale at said place of business, where it is weighed and graded by said company with its own appliances.

Said company has failed to take out a license from the Railroad and Warehouse Commission of the State of Minnesota as required by said law, or to recognize in any respect, the right of said Commission to regulate or supervise the operation of its said grain warehouse in receiving, storing, shipping or handling grain.

This action originated in the District Court of Ramsey County, in which proceeding the said Railroad and Warehouse Commission asked for judgment that the W. W. Cargill Company, the defendant, be permanently restrained from the further operation of the said elevator, in the receiving, storing or handling of wheat or duly licensed therefor by the said Commission. The judgment of the District Court was that said Chapter 148 of the General Laws of Minnesota for the year 1895, is unconstitutional and void, in so far as it attempts to declare warehouse and elevators in which only the grain of the owner is received, stored, shipped or handled, public elevators, and declaring said elevators and warehouses to be under the supervision and subject to inspection by the Railroad and Warehouse

Commission; that said chapter in so far as it applies to elevators and warehouses situated upon the right of way of a railway company in which the grain of others is received, stored, shipped or handled for a compensation, is constitutional and valid.

On appeal from the judgment of said District Court to the Supreme Court of the State of Minnesota the sole question passed upon by that Court was the validity of the law in question in so far as it applied to elevators and warehouses, situated on the right of way of a railroad company, receiving, storing, shipping or handling grain the own sole property of the party engaged in such elevator or warehouse business.

The Appellate Court reversed the judgment of the lower court and held that the act was valid in so far as it required a license and subjected the business of such elevator and warehouse companies to the reasonable and necessary rules and regulations of the Railroad and Warehouse Commission.

ARGUMENT.

I.

The business of transportation by a common carrier in all its details, and by all its agencies, is subject to reasonable control by the State in the exercise of its police power. The large sovereign powers given by the State to railway corporations are granted and exercised only upon the theory that these public rights are to be used to promote the general welfare. The right of eminent domain upon which primarily the railroad corporation bases its acquisition of the right of way, is granted by the State to facilitate public service and to conserve public uses.

Such corporation has been endowed with the power of eminent domain because it is a public highway and performs a public service, which save for the private enterprise, would be performed by the State.

The contention here made that the power to acquire a right of way by eminent domain is granted to enable the railroad corporation to discharge its duties to the public, is sustained

> *In Matter of Application of N. Y. Central & Hudson River, R. R. Co.*, 77 N. Y. Court of Appeals, 248,

in which the Court say:

> "The only limit to the power granted to railroad corporations to take lands for railroad purposes, is the reasonable necessity of the corpora-

tion in the discharge of its duty to the public. This includes the acquisition of lands for depots and buildings convenient for the * * * receipt, storage, safe-keeping and delivery of freight and property."

In recognition of the right of the public in certain uses and facilities afforded by the common carrier in its right of way, the Supreme Court of Minnesota, in the case of

Rhodes vs. N. P. R. R. Co., 34 Minn. 89,

say:

"Inasmuch as small grain transported in bulk cannot be conveniently loaded directly from teams into the cars, but must ordinarily be first placed in warehouses or elevators and temporarily stored there, these duties and obligations in regard to handling and storing grain were undoubtedly imposed upon railroad companies, as being necessarily incident to the convenient transportation of it by them as common carriers. Independently of any statute, common carriers have an undoubted right to adopt reasonable rules and regulations as to the place or places where they will receive freight for transportation. And in view of these statutory provisions already cited, we think it was clearly the legislative intent that, if a railroad company itself should furnish suitable warehouse facilities for receiving, handling and storing all grain designed for transportation over its road, that it might designate such warehouse or elevator as to the exclusive place at which it would receive grain for shipment at that station, and that it might refuse to receive it or furnish cars for its shipment

at any other place; but that when it failed or refused itself to furnish these facilities on the terms fixed by statute, then it should be required to allow others to build warehouses adjacent to its track, or else build sidetracks to warehouses near the station, so that the public might be furnished with the proper facilities. Of course, this obligation in such cases necessarily implies and includes the further obligation of furnishing cars, upon reasonable notice, in which to ship grain out of such warehouses."

Further on in the same opinion, it is said (p. 91), that:

"It is not important who owns the buildings, or who is put in charge of the business, or who receives the profits of it, but, in order to constitute a compliance with the statute, its business must be so conducted that, when a proposed shipper delivers his grain for transportation, and for temporary storage incident to said transportation, he can deliver it to the railroad company, and not be compelled to deliver it to some particular warehouseman, who might or might not be responsible, and to whom the shipper might not be at all willing to intrust his property."

The Court there had under consideration section 2, chapter 31, Gen. Laws 1874 (G. S. 1894, sec. 7657), which is as follows:

"Whenever any railroad company shall refuse to receive store, handle and deliver grain, at any station on the road, at the rates provided in section 1 of this act, then in such case said railroad company shall, upon demand, allow any person,

association or corporation to erect and maintain at such station, adjoining the railroadtrack or sidetrack, warehouses to receive store and ship grain; or, at the option of the railroad company such company shall build and maintain a sidetrack to and for the use and accommodation of any warehouse near the station. And no person keeping a warehouse or elevator shall in any case be compelled to pay the railroad company, or any person keeping any other warehouse or elevator, any sum or compensation for or on account of the privilege of doing business."

In this case the Court denies the right of the railway company to shift the duty of furnishing facilities for the receipt, storage, handling and shipment of grain to parties attaining through arrangement with such company, location upon the right of way, regardless of whether the facilities so furnished were sufficient to meet the demands of the business at such station. If, however, the railway company itself furnished at one of its stations, suitable warehouse facilities for receiving, handling, storing and delivering grain at the rates fixed by law, all grain designated or transportation over its road, it might designate such warehouse or elevator as to the exclusive place at such station at which it would receive grain for shipment and might refuse to receive it or to furnish cars for its shipment at any other place.

The decision of the Supreme Court of this state in the case last cited, confirms the position contended for by the defendant in error, viz: that it is primarily the duty of the common carrier to furnish all suitable and reasonable facilities for the receipt and transfer

of grain to the cars upon its line of railway; that such duty devolves upon the common carrier by reason of the greater advantages enjoyed and superior facilities offered in its right of way, and that the railway company failing to furnish such necessary and suitable facilities, parties acquiring the privilege of location on the right of way of a railroad company for the purpose of receiving, storing, shipping or handling grain, whether their own sole property or the property of others for a compensation, are performing a duty primarily that of the railroad company and are charged with the same duties and obligations to the public and subject to public control.

Plaintiff in error in the state court denied the proposition that the location of an elevator or warehouse upon the right of way of a common carrier whose cars are the only means or instrumentalities for shipping grain to terminal or foreign markets, effected such a business with a public interest.

It is not contended by the defendant in error that it is the location alone that is the determining factor in the question; but we do insist that the location of an elevator or warehouse on the right of way of a common carrier, coupled with the character of the product handled, and the exclusiveness of control and operation of the instrumentalities for weighing, grading and dockage, demands reasonable public supervision and regulation. A railroad company may permit a shipper to erect freight houses, elevators, warehouses and other structures for the convenience of storage and shipment,

without making the shipper's business one affected with a public interest and subject to state regulation, but when such buildings are used as *public market places* for the sale of grain hauled from the farms of the vicinity in wagons (see Reecord, p. 17, par. 8), such exemption from public control, we contend, is not enjoyed.

II.

It is contended by the state that the Cargill Elevator Co. is a public market place, where grain grown in the vicinity of the village of Lanesboro, is hauled by wagon and sold; received into the elevator and transferred to the cars of a railroad company. The ultimate object to be attained by any elevator or warehouse situated upon the right of way of a railroad company is the shipment by rail of the grain purchased as one's sole property or the grain of others stored and handled for a compensation. The business of a private elevator or warehouse conducted on the right of way of a railroad company is not carried on for the convenience of the public, nor is its object the furnishing of shipping facilities for grain growers. The location on the right of way is made to minimize the expense of transferring grain purchased from the public to the cars of the railroad company. The advantages of such location are used to the detriment of grain markets not so fortunately situated. By reason of the advantages enjoyed by this elevator and warehouse in minimizing the expense of operation, the public is induced to market its

grain upon the right of way. In short, a public utiltiy is enjoyed by the private grain buyer in conducting the business of buying and shipping grain.

In the case of the *Missouri Pacific R. R. Co. vs. Nebraska,* 17 Sup. Ct. Rep. 134, an action instituted by the Nebraska State Board of Transportation to compel the railway company to permit private parties to occupy its right of way with an elevator to be used in storing only the grain owned by a number of individuals voluntarily associated together for their own benefit, the Court say as follows:

> "A railroad corporation doubtless holds its station, grounds, tracks and right of way as its private property, *but for the public use for which it was incorporated;* and may in its discretion permit them to be occupied by other parties with structures convenient for the receipt and delivery of freight upon its railroad, so long as a free and safe passage is left for the carriage of freight and passengers; but how a railroad company can be compelled to do so against its will, is a wholly different question."

While the effect of the decision in this case is to deny the right of private parties to the privileges of the right of way of a railway company for the purpose of receiving and storing the grain of only those by whom the privilege was sought, we contend that the rule laid down cannot be made applicable to the facts of this case.

In the Nebraska case, the petitioners for the location on the right of way proposed to store only their own grain. There was to be no business enterprise conducted in the structure so located. The sole object to be attained was the storing of their own individual grain; no grain was to be purchased.

It is important to notice in connection with the reading of the Nebraska case, that the private ownership of the station ground, and right of way of the railway company is limited to the public uses for which such company was incorporated.

The Cargill Elevator Company is not only on the right of way for the purpose of immediate connection with the cars of the common carrier, but *for the purpose of acquiring by purchase from the farmers of the vicinity the grain which constitutes the entire bulk of its shipment.*

That an elevator or warehouse so operating is a public market, is stated by the Court.

In the Matter of Application of Cooper, etc., 28 Hun. (N. Y.) 515.

In this case application was made by Edward Cooper, Mayor of New York, to acquire title to lands for a public market. Authority was given to the municipality by statute to acquire lands by the right of eminent domain for a public purpose. The act of the legislature of New York under which proceedings were had

was entitled, "An act to provide for the establishment and maintenance of a public market place for farmers and market gardeners in the city of New York, for the acquisition of lands for this purpose, and for the regulation and management of the same." The act provided that certain lands situate in the city of New York should be declared a public market place where farmers and market gardeners might dispose of their farm or market produce. Condemnation proceedings were opposed on the ground that the purpose for which the lands was sought was not a public one.

The Court in determining what constitutes a public purpose, so as to authorize a proceeding to take lands by the exercise of the right of eminent domain, say:

> "The construction of a market for the sale of a particular kind of produce is similar in all respect to the appropriation of land for the use of a railroad which is to be used by the railroad company making application for it. It is a public use, although only benefiting the particular percons who use it, and the company which enjoys the franchise acquire by obtaining title to the land."

In this case it was decided that land may be taken by the exercise of the right of eminent domain for the establishment of a public city market, and that "it is not essential to the definition of a public market that it should be a place open to all persons for the sale of all commodities." It may be a public use, although limited to the sale of a particular kind of produce.

If, as we contend, the business carried on by the Cargill Elevator Company is in the nature of a public market, it follows that such business is properly the subject of reasonable supervision and regulation by the state in the public interests.

II.

The provisions of the act of 1895 applicable to the business conducted by the Cargill Elevator Company is a reasonable exercise by the state of its police power when its location upon the right of way of a railroad and its relation to the grain growing interests of the community are considered.

The great industry of the state, the production of grain and its shipment, constitute the most important factors in its business life. The grain growing districts are threaded with railroads; and elevators and warehouses for the purchase and shipment of grain are erected and maintained at all stations and sidings, and a very important part of the business of railways consists in the transportation of grain.

These facts have been recognized by the Supreme Court of this state in two of the most important cases involving the rights and defining the duties of railroad companies to the public with reference to the transportation of grain. The Court in *Guerney vs. Minneapolis Union Elevator Co.*, 65 N. W. Rep. 136, a case involving the right to establish a public elevator upon

the right of way of a railway; in recognizing the importance to the grain growing interests of the state of its transportation to markets, say:

> "Courts will, as a rule, take notice of whatever ought to be generally known within the limits of their jurisdiction, and we may well take judicial notice of the fact that the handling and transportation of grain constitute a very important part of the business of the railways of the state and that grain elevators and warehouses are reasonable and necessary, if not absolutely essential, to the feasible, prompt and economical handling, storing and transporting of grain by railroads. The erection and operation of grain elevators and warehouses upon the right of way of railroads with side tracks thereto, are matters of such general and public interest that the law has made provisions for the acquiring of a right to locate and operate them upon the right of way of railway companies without their consent."

The Supreme Court in the case of *Stuart vs. Great Northern Ry Co.,* 68 N. W. Rep. 208, stated as follows:

> "The methods of transportation and trade customs relating to the handling, sale and transporting of the products of this and other growing states, render grain elevators a practical necessity in the transfer of grain from the purchaser to the railway cars by which it is carried to the consumer. They are connecting links in the chain of transportation between the farmers' wagons and the

railway cars. Their use in facilitating the handling, storage and transportation of the products of the state is a public use and subject to legislative regulation and control."

While these cases have no direct bearing upon the question at issue, they indicate the importance in which the state Supreme Court views the business of handling and transporting grain and the important part that the handling and transportation of grain occupies in the business of railways within the state.

The various small grains of all kinds, including wheat, oats, corn, barley, rye, flax and buckwheat, constitute no small part of the general food supply. It is difficult to estimate what proportion of the grain raised in the state passes through elevators, public or private, in moving to terminal points and to the consumers. In some communities no doubt a portion of the grain that is shipped from the district in which it is raised is loaded upon the cars of the common carrier from wagons, but with the great progress that in recent years has been made in the adoption of superior facilities for the handling and shipment of grain, it is safe to say that very little grain gets to the car of the common carrier except through elevators. The elevators of the country, whether public or private, handling such a great portion of the general food supply become most important factors in the business life of a community.

The amount of grain that passes through the elevators and warehouses of this state and the amount of grain that is in storage, becomes of

the greatest importance when viewed with relation to the food supply. We contend that it is essential to the public welfare that the proper authorities should know at all times, or at least have the means of knowing, the total amount of available grain foods. Such information may be obtained from public elevators over which such supervision has now become established, but there is no means, except under the provisions of legislation similar to that in question, of gaining such information from elevators and warehouses which do not store and handle the grain of the public for a compensation.

Regulation by the state of such private warehouses and elevators to the extent of gaining information and statistics relative to the grain supply, is not an unreasonable and unwarranted interference in a private business. If a knowledge of the food supply of the country is of public importance and conducive to the general welfare, then the regulation and supervision by the state, of elevators and warehouses receiving, storing, handling and shipping grain for the purpose of obtaining such information and statistics, is conducive to the public good.

The provision of this law which requires an elevator or warehouse to keep a true and correct account in writing, of all grains received, stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or other cause, serves the public interest, because it provides indispensable information in determining the grain and food supply of the country; and performs the further office of furnishing the

facts relative to grain and the grain raising business, which are valuable in a compilation of public statistics.

> "The public necessity of the exercise of the police power in any case is a matter addressed to the discretion of the legislature; but whether a given regulation is a reasonable restriction upon personal rights is a judicial question."
>
> *Tiedman Lim. Pol. Pow.,* Sec. 194.

> "Over the railway as a highway, and in all its public relations, the state, by virtue of its general legislative power, has supervision and control."
> *Id.*

There is little need under our system of government for placing a close and narrow interpretation on the police power or restricting its scope, so as to hamper the legislative power in dealing with the varying necessities of society and the new circumstances as they arise, calling for legislative intervention in the public interest.

Budd vs. New York, 143 U. S. 532.

When a business is a proper subject of the police power, the legislature may, in the exercise of that power, adopt any measures, not in conflict with some provisions of the constitution, that it sees fit; provided, only, they are such as have some relation to, and some tendency to accomplish the desired end; and if the measures adopted have such relation or tendency, the

courts will never assume to determine whether they are wise or the best that might have been adopted.

State vs. Corbett, 57 Minn. 349, citing
State vs. Donaldson, 41 Minn. 74, and
Rippe vs. Becker, 56 Minn. 100.

Except where the constitution has imposed limitations upon the legislative power, it must be considered as practically absolute, and to warrant the judiciary in declaring a statute invalid, they must be able to point out some constitutional limitation which the act clearly transcends.

Id., 350.

"It will probably not be disputed, that every one has a right to pursue in a lawful manner, any calling which he selects. The state can neither compel him to pursue any particular calling or prohibit him from engaging in any lawful business, provided he does so in a lawful manner. It is long recognized and beyond dispute, that the state in the exercise of its police power, is, as a general proposition, authorized to subject all occupations to a reasonable regulation, when such regulation is required for the protection of public interests or for the public welfare."

Tiedman on State and Federal Control, Vol. 1, page 235.

The act of 1895, in so far as its provisions are applicable to elevators and warehouses which do not handle

the grain of others for a compensation, requires that a license shall be taken out by the owner or owners thereof, and that it shall be unlawful for any person or persons to operate such an elevator or warehouse until duly licensed. It is obvious that by this provision, it was intended that the proper state authorities should exercise a general supervision over a private elevator or warehouse business in the interests and for the protection of the grain growers who bring their product to market; that by reason of the dependence of the grain seller upon the party operating the elevator for fair and honest grades, weight and dockage, it was required that such owner or owners procure a license, thereby giving to the supervising power of the state, an opportunity of establishing such rules and regulations relative to the conduct of the business as will insure fair and honest weights and grades of grain. This regulation in no manner interferes with the conduct of the business or deprives the owner of any of his property rights, but is a fair and reasonable regulation of a business in which the public certainly has an interest.

It is also provided in the act that complaint may be made in writing to the Railroad and Warehouse Commission by any person aggrieved by the party operating any country elevator or country warehouse under this act, who fails to give just and fair weights and grades, or is guilty of making unreasonable dockage for dirt or other cause, or fails in any manner to operate his elevator or warehouse fairly, justly and properly. Upon the making of such complaint the Railroad and Ware-

house Commission may inquire into and investigate the same, and if it is found that the complaint and charges made are true, action is instituted to obtain the proper redress and relief to the party injured.

The necessity for the enforcement of these provisions relative to investigation and inquiry upon complaint made against the owner or owners of any elevator and the result of such investigation, will no doubt play an important part in the issuance by the Railroad and Warehouse Commission of a license to conduct such business. The owner of an elevator or warehouse who has been charged with fraudulent and dishonest weighing, grading and docking of grain, and who has not conducted his business in accordance with the rules and regulations made by the Commission would be denied a license to continue in such business. The necessity for obtaining a license before the owner of an elevator or warehouse could lawfully transact such business, would enable the state authorities to confine the business of purchasing grain at elevators on the right of way of railroads to the limits prescribed by fairness and honesty. The business of receiving, handling and storing grain in elevators and warehouses has, within the past twenty years in this state, been brought by successive legislative enactments gradually within the control and supervision of the state. This legislation was called for by the unjust practices and abuses which were the outgrowth of the unparalleled development of the grain growing interests of the state and the rapid multiplying of railroads, elevators and warehouses. The object of all legislation affecting the receiving, storing

and transporting of grain has been for the protection of the grain grower against the unfair practices of elevator and warehouse companies and the excessive rates of transportation companies.

At the time of the passage of the act of 1895, the history of the grain business in this state had become characterized by certain evils and abuses. The same is true of the business as carried on in all important grain states and grain centers. Some of the most important judicial decisions of this country have resulted from the legislation of the states addressed to the correction and prevention of such evils. Because of the situation of such houses and their intimate relationship to the business of transportation of grain by rail, the legislature has subjected them to regulation.

Munn vs. Illnois, 94 U. S. 113.

Budd vs. N. Y., 143 U. S. 517.

Brass vs. Stoesser, 153 U. S. 391.

There are provisions of the act which cannot be made applicable to elevators and warehouses which do not handle the grain of the public for hire. The effect of the act as construed by the state court is not to make it the duty of a private elevator situated upon the right of way of a railway to handle the grain of the public and to issue storage receipts in conformity to its provisions.

The opinion of the state court as to the application of the act is sustained by this court in the case of *Brass vs. Stoesser,* 153 U. S. 404, in passing on the consti-

tutionality of a statute of North Dakota similar to the one here in question, in which it is said:

> "Another argument advanced is based on the admitted allegation that the principal business of the plaintiff in error in connection with his warehouse is in storing his own grain, and that the storage of the grain of other persons is and always has been a mere incident and it is said that the effect of this law will be to compel him to renounce his principal business and become a mere warehouseman for others. We do not understand this law to require the owner of a warehouse building used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of receiving and storing the grain of other persons for profit."

IV.

When a part of a statute is unconstitutional that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other.

Cooley Constitutional Limitations, (6th Ed.) p. 210.

O'Brien vs. Krenz, 36 Minn. 136.

Myer vs. Berlandi, 38 Minn. 438.

If one provision of a law is invalid and others valid, the latter are not affected by the void provision unless they are plainly dependent on each other and so inseparably connected that they cannot be divided without defeating the object of the statute.

Duyree vs. Mayor, 96 N. Y. 477.

This Court in the case of *Packing Company vs. Keokuk*, 95 U. S. 80, in construing a statute requiring every railway, steamboat, canal and navigation company and all other companies doing business in the state, and upon whose works freight might be transferred, whether by companies or individuals, to pay certain taxes, the act applying to domestic as well as interstate transportation, held, that as to the latter, the act was void, though that part was not distinguishable in terms from the valid provision, say:

> "Statutes that are constitutional in part only, will be upheld, so far as they are not in conflict with the constitution, provided the allowed and prohibited parts are severable."

The provisions of the act here in question which are applicable only to elevators and warehouses situated on the right of way of a railway company handling the grain of the public for a compensation, are easily distinguishable and severable from the provisions of the act which apply only to elevators, so situated, which do not handle the grain of others for a compensation.

The provisions of the act requiring a license to be taken out by the owner or owners of an elevator or warehouse and making such business subject to certain rules and regulations by the State Railroad and Warehouse Commission, are in no wise dependent for their operation and effect upon the provision of the law applicable only to elevators or warehouses handling the grain of the public for a compensation.

Justice Mitchell of the State Court, in an opinion in this case in which he dissents from the majority, sustains the contention of the defendant in error that the provision of the act requiring a license is a proper exercise by the state of its police power, in the following terms:

> "In view of the facts, among others, that grain is the principal agricultural product of the state, that in the purchase and sale of it there is great liability to abuses in the matter of weights and grades, and that these are usually determined by the court that although the owner of a warehouse uses it exclusively for the storage of his own grain, yet if he uses it for the purpose of buying grain from the public, thus rendering it in effect, a public market, his business is a proper subject of police regulation by the state to the extent of providing such rules and regulations as are reasonably necessary to secure to the public just and correct weights and grades. The requirement of a license may be a resaonable regulation in such cases as a means of enabling state officials to ascertain who are engaged in the business."
> (Record, Fol. 61.)

It has been the uniform rule of this Court, never to depart from the construction of a state constitution by its highest judicial authority, unless such construction is manifestly unsound.

Railroad Co. vs. *Gaines*, 97 U. S. 697.

Burgiss vs. *Seligman*, 107 U. S. 32.

Flack vs. *Connecticut*, 109 U. S. 371.

It is respectfully submitted that the Supreme Court of Minnesota did not err in the decision under review.

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Attorneys for Defendant in Error.

Supreme Court of the United States.

No. 116.—October Term, 1900.

W. W. Cargill Company, Plaintiff in Error,
vs.
The State of Minnesota ex rel. the Railroad and Warehouse Commission.

In error to the Supreme Court of the State of Minnesota.

[March 5th 1901.]

Mr. Justice Harlan delivered the opinion of the Court.

The present action was brought in one of the courts of Minnesota, in the name of the State, against the W. W. Cargill Company, a Wisconsin corporation. The relief sought was a decree perpetually enjoining the defendant from operating a certain elevator and warehouse owned by it, situated on the right of way of the Chicago, Milwaukee and St. Paul Railway Company, in the village of Lanesboro, Minnesota, until it should have obtained a license from the Railroad and Warehouse Commission of that State.

The suit is based on a statute of Minnesota, approved April 16th 1895, and entitled "An act to regulate the receipt, storage and shipment of grain at elevators and warehouses on the right of way of railroads, depot grounds and other lands used in connection with such line of railway in the State of Minnesota, at stations and sidings, other than at terminal points." *Gen. Stat. Minn.* 1895, *c.* 148, *p.* 313.

It seems to be necessary to a clear understanding of the case and to the disposition of some of the questions presented for consideration that the entire act be examined. It is therefore given in full in the margin.*

*"§ 1. All elevators and warehouses in which grain is received, stored, shipped or handled and which are situated on the right of way of any railroad, depot grounds or any lands acquired or reserved by any railroad company in this State to be used in connection with its line of railway at any station or siding in this State, other than at terminal points, are hereby declared to be public elevators, and shall be under the supervision and subject to the inspection of the Railroad and Warehouse Commission of the State of Minnesota, and shall, for the purposes of this act, be known and designated as public country elevators or country warehouses.

"It shall be unlawful to receive, ship, store or handle any grain in any such elevator or warehouse, unless the owner or owners thereof shall have procured a license therefor from the State Railroad and Warehouse Commission, which license shall be issued for the fee of one dollar per year, and only upon written application under oath, specifying the location of such elevator or warehouse and the name of

We here give only the first and second sections of the act:

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the person, firm or corporation owning and operating such elevator or warehouse and the names of all the members of the firm or the names of all the officers of the corporation owning and operating such elevator or warehouse, and all moneys received for such licenses shall be turned over to the State grain inspection fund Such license shall confer upon the licensee full authority to operate such warehouse or elevator in accordance with the laws of this State and the rules and regulations prescribed by said Commission, and every person, company or corporation receiving such license shall be held to have accepted the provisions of this act, and thereby to have agreed to comply with the same.

"If any elevator or warehouse is operated in violation or in disregard of the laws of this State its license shall, upon due proof of this fact, after proper hearing and notice to the licensee, be revoked by the said Railroad and Warehouse Commission. Every such license shall expire on the thirty-first day of August of each year.

"§ 2. No person, firm or corporation shall in any manner operate such public country elevator or country warehouse without having a license as specified in the preceding section, and any attempt to operate such elevator or warehouse without such license shall be deemed a misdemeanor to be punished as hereinafter provided, and any attempt to operate such elevator or warehouse in violation of law and without having the license herein prescribed, may upon complaint of the party aggrieved, and upon complaint of the Railroad and Warehouse Commission, be enjoined and restrained by the district court for the county in which the elevator or warehouse in question is situate, by temporary and permanent injunction, conformably to the procedure in civil actions in the district court.

"§ 3. The Railroad and Warehouse Commission shall before the first of September of each year, and as much oftener as they shall deem proper, make and promulgate all suitable and necessary rules and regulations for the government and control of public country elevators and public country warehouses, and the receipt, storage, handling and shipment of grain therein and therefrom, and the rates of charges therefor, and the rates so fixed shall be deemed *prima facie* responsible and proper, and such rules and regulations shall be binding and have the force and effect of law; and a printed copy of such rules and regulations shall at all times be posted in a conspicuous place in each of said elevators and warehouses, for the free inspection of the public.

"§ 4. The party operating such country elevator or country warehouse shall keep a true and correct account in writing, in proper books, of all grain received,

procured a license therefor from the State Railroad and Warehouse Commission, which license shall be issued for the fee of one dollar per year, and only upon written application under oath, specifying the location of such elevator or warehouse and the name of the person, firm or corporation owning and operating such elevator or warehouse and the names of all the members of the firm or the names of all the officers of the corporation owning and operating such elevator or warehouse, and all moneys received for such licenses shall be turned over to the State grain inspection fund. Such license shall confer upon the licensee full authority to operate such warehouse or elevator in accordance with the laws of this State and the rules and regulations prescribed by said Commission, and every person, company or corporation receiving such license shall be held to have accepted the provisions of this act, and thereby to have agreed to comply with the same. If any elevator or warehouse is operated in violation or in

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stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or other cause on each lot of grain received in store for sale, storage or shipment, and shall, upon the request of any person delivering grain for storage or shipment, receive the same without discrimination during reasonable and proper business hours, and shall, upon request, deliver to such person or his principal, a warehouse receipt or receipts therefor in favor of such person or his order, dated the day the grain was received, and specifying upon its face the gross and net weight of such grain, the dockage for dirt or other cause, and the grade of such grain, conformable to the grade fixed by the State Railroad and Warehouse Commission and in force at terminal points; and shall also state upon its face that the grain mentioned in such receipt or receipts has been received into store to be stored with grain of the same grade under such inspection, and that, upon the return of said receipt or receipts, and upon the payment or tender of payment of all lawful charges for receiving, storing, delivering or otherwise handling said grain, which charges may have accrued up to the time of the return of said receipt or receipts, such grain is deliverable to the person named therein, or his order, either from the elevator or warehouse where it was received for storage; or if the owner so desires, in quantities not less than a carload on track on the same line of railway at any terminal point in this State which the owner may designate, where State inspection and weighing is in force, such grain to be subject to such official inspection and weight as may be determined upon its arrival or delivery at such terminal point and the party delivering shall be liable for the delivery of the kind, grade and net quantity called for by such certificate, less an allowance not to exceed sixty pounds per carload for shrinkage or loss in transit, if such shrinkage or loss occurs. On the return or presentation of such receipts by the lawful holder thereof, properly endorsed, at the elevator or warehouse where the grain represented therein is made deliverable and upon the payment or tender of payment of all lawful charges, as hereinbefore provided, the grain shall be immediately delivered to the holder of such receipt, and it shall not be subject to any further charges for storage after demand for such delivery shall have been made, and cars are furnished by the railway company which the party operating the elevator or warehouse shall have called for promptly upon the request for shipment made by the holder of such receipt in

disregard of the laws of this State its license shall, upon due proof of this fact, after proper hearing and notice to the licensee, be revoked by the said Railroad and Warehouse Commission. Every such license shall expire on the thirty-first day of August of each year..

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the order of the date upon which such receipts are surrendered for shipment. The grain represented by such receipt shall be delivered within twenty-four hours after such demand shall have been made and cars or vessels or other means for receiving the same from the elevator or warehouse shall have been furnished.

"If not delivered upon such demand within twenty-four hours after such car, vessel or other means for receiving the same shall have been furnished, the warehouse in default shall be liable to the owner of such receipt for damages for such default, in the sum of one cent per bushel, and in addition thereto one cent per bushel for each and every day of such neglect or refusal to deliver; *provided*, no warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded by holders of different receipts or terminal orders and as rapidly as due diligence, care and prudence will justify.

"On the return of said receipts, if shipment or delivery of the grain at terminal point is requested by the owner thereof, the party receiving such grain shall deliver to said owner a certificate in evidence of his right to such shipment or delivery, stating upon its face the date and place of its issue, the name of the consignor and consignee and place of destination and shall also specify upon the face of such certificate the kind of grain and the grade and net quantity exclusive of dockage, to which said owner is entitled by his original warehouse receipts and by official inspection and weighing at such designated terminal point.

"The grain represented by such certificate shall be subject only to such freight or transportation or other lawful charges which would accrue upon said grain from the date of the issue of said certificate to the date of actual delivery, within the meaning of this act, at such terminal point.

"All warehouse receipts issued for grain received and all certificates shall be consecutively numbered, and no two receipts or certificates bearing the same number shall be issued during the same year from the same warehouse, except when the same is lost or destroyed, in which case the new receipt or certificate shall bear the same date and number as the original and shall be plainly marked on its face 'Duplicate.' Warehouse receipts or certificates shall not be issued except upon grain which has actually been delivered in said country warehouse. Warehouse

The complaint alleged that the elevator was used by the defendant company in connection with the railway for the receiving and shipping of wheat and other grains transported over the lines of the railway company; was essential and necessary to the railway company in order promptly, safely and properly to handle grains received by it for shipment; and constituted, in that respect, a necessary adjunct of the railroad.

The facts upon which the case was determined are set forth in a finding based upon the stipulation of the parties and may be summarized as follows:

On April 16th 1895 and for more than a year prior thereto, the defendant company was engaged in the business of buying, selling and dealing in grain—its principal office and place of business being in the city of La Crosse, Wisconsin. It owned and operated large terminal and other grain elevators in that city, in Green Bay, and in other places in Wisconsin.

The village of Lanesboro contained about eleven hundred inhabitants, and was situated in the county of Fillmore, Minnesota, upon the railway line of the Southern Minnesota division of the Chicago, Milwaukee and

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receipts shall not be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received. No receipt or certificate shall contain language in anywise limiting or modifying the liability of the party issuing the same as imposed by the laws of this State, and any such language, if inserted, shall be null and void.

"A failure to specify in such warehouse receipts or certificates the true and correct grade and net weight, exclusive of dockage, of any lot of grain to which the owner of such grain may be entitled shall be deemed a misdemeanor on the part of the person issuing the same for which, on conviction, he may be punished as hereinafter provided.

"§ 5. In case there is a disagreement between the person in the immediate charge of and receiving the grain at such country elevator or warehouse, and the person delivering the grain to such elevator or warehouse for storage or shipment, at the time of such delivery, as to the proper grade or proper dockage for dirt or otherwise, on any lot of grain delivered, an average sample of at least three quarts of the grain in dispute may be taken by one or both parties and forwarded in a suitable sack, properly tied and sealed, express charges prepaid, to the chief inspector of grain at St. Paul, which shall be accompanied by the request in writing, of either or both of the parties aforesaid, that the said chief inspector shall examine the same and report what grade or dockage or both the said grain is, in his opinion, entitled to and would receive, if shipped to the terminal points and subjected to official inspection.

"It shall be the duty of said chief inspector, as soon as practicable, to examine and inspect such sample of grain and adjudge the proper grade or dockage or both, to which said sample is, in his judgment, entitled, and which grain of like quality and character would receive if shipped to the terminal points and subjected to official inspection.

"As soon as the chief inspector has examined, inspected and adjudged the grade and dockage as aforesaid, he shall at once make out in writing and in triplicate a

St. Paul Railway Company, distant about fifty-four miles west from La Crosse, and having by the railway line referred to direct connection with that city.

Considerable quantities of grain had been annually raised in Fillmore County, and marketed, sold and delivered into local grain elevators and warehouses in Lanesboro and thence shipped in cars over the above-mentioned line of railway, which was the only means for such shipment.

The defendant company owned, occupied and operated a grain warehouse situated on the right of way of the railway company and along its tracks in Lanesboro.

No machinery or mechanical appliances whatever had been used or were contained in its warehouse at Lanesboro; and all grain of every kind received into it during the period in question had been hauled to the warehouse in bags or farm wagons and there unloaded. The bags of grain were placed upon small hand trucks at the entrance of the building and conveyed first to the weighing scale and thence to the grain bins of the warehouse into which the grain was poured from the bags.

The grain shipped from the warehouse was "spouted" by force of gravity into box cars standing on the railway tracks and thence carried by the railroad company over its line for the defendant company to such points as the latter might direct.

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statement of his judgment and finding in respect to the case under consideration, and shall transmit by mail to each of the parties to said disagreement a copy of the said statement of his judgment and finding, preserving the original together with the sample on file in his office.

"The judgment and finding of the said chief inspector shall be deemed conclusive as to the grade or dockage, or both, of said sample, submitted for his consideration, as herein provided, as well as conclusive evidence of the grade or dockage, or both, that grain of the same quality and character would receive if shipped to the terminal points and subjected to official inspection.

"§ 6. Whenever complaint is made, in writing, to the Railroad and Warehouse Commission by any person aggrieved, that the party operating any country elevator or country warehouse under this act fails to give just and fair weights and grades, or is guilty of making unreasonable dockage for dirt or other cause, or fails in any manner to operate such elevator or warehouse fairly, justly and properly, or is guilty of any discrimination, then it shall be the duty of the Railroad and Warehouse Commission to inquire into and investigate said complaint and the charge therein contained, and to this end and for this purpose the Commission shall have full authority to inspect and examine all the books, records and papers pertaining to the business of such elevator or warehouse, and all the scales, machinery and fixtures and appliances used therein.

"In case the said Commission find the complaint and charge therein contained, or any part thereof, true, they shall adjudge the same in writing, and shall at once serve a copy of such decision, with a notice to desist and abstain from the error and

Each parcel or lot of grain received into or deposited or handled in or shipped from the warehouse had been purchased by the defendant and was its sole and absolute property.

The defendant company during the period mentioned never received into or shipped from or handled or deposited or in any way stored in the warehouse any grain in which any other person or persons had any property, title, right or interest; nor issued or offered to issue any warehouse receipt or storage ticket for grain received there; nor carried on or offered or attempted to carry on in the warehouse the business of receiving, handling, storing or shipping grain of or for any other person or persons. But the warehouse was used, occupied and operated by the defendant solely for the purpose of receiving, handling and shipping its own grain in its private capacity as grain owner and merchant.

During all the time the warehouse was owned, occupied and operated by the defendant, all grain of every kind and description received into or deposited or handled in or shipped from the warehouse was purchased by it for the express purpose of acquiring, shipping and transporting it as its property solely to its terminal elevators in the cities of La Crosse and Green Bay, or to Milwaukee, Wisconsin, or to Chicago, Illinois, and thence to other points in States east of Lake Michigan and upon the Atlantic seaboard.

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malpractice found, upon the party offending and against whom the complaint was made, and to afford prompt redress to the party injured, and if such party does not desist and abstain and does not give the proper redress and relief to the party injured, it shall be the duty of the said Commission to make a special report of the facts found and ascertained upon the investigation of said complaint and the charge therein contained, which report shall also include a copy of the decision by said Commission made therein to the attorney of the county where such elevator or warehouse is located, who shall institute and carry on in the name of the complainant such actions, civil or otherwise, as may be necessary and appropriate to redress the wrongs complained of and to prevent their recurrence in the future.

"§ 7. Any person, firm or corporation operating any country warehouse or country elevator under this act shall, at any and all times when requested by the Railroad and Warehouse Commission, render and furnish in writing under oath to the said Commission a report and itemized statement of all grain received and stored in or delivered or shipped from such elevator or warehouse during the year then last past. Such statement shall specify the kind, grade, gross and net weight of all grain received or stored, and all grain delivered or shipped, and shall particularly specify and account for all so-called overages that may have occurred during the year. Such statement and report shall be made upon blanks and forms furnished and prescribed by the Railroad and Warehouse Commission.

"The Commission shall cause every warehouse and the business thereof, and the mode of conducting the same, to be inspected at such times as the Commission may order, by one or more members of the Commission, or by some member of the grain inspection department, especially assigned for that purpose, who shall report

All the grain so received into or deposited or handled in the warehouse had been actually shipped as its property from the warehouse in carload lots over the railway line, and directly and continuously transported by the railway company beyond Minnesota to its terminal elevators, cities or points in Wisconsin, Illinois and States other than Minnesota, and to no other points or places.

As fast as received into the warehouse from wagons all the grain was "spouted" into the box cars of the railway company for shipment, or was loaded into such cars severally containing different kinds of grades of grain separated from each other within the car by partitions, as sufficient grain for such a carload was accumulated in the warehouse, or was loaded out and so shipped as a full carload of grain of any one kind and grade was received into the warehouse; and no grain received or deposited in or shipped from the warehouse was handled or shipped in any manner other or different from one of the modes indicated, or kept in the warehouse longer or for any other purpose than as stated.

No grain received into or deposited or handled in or shipped from the warehouse had been bargained or sold or delivered to any person or firm or corporation doing business or resident in or a citizen of Minnesota, or shipped or transported to or delivered at any city, village, town, point or place within the boundaries of that State.

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in writing to the Commission the result of such examination; and the property, books, records, accounts, papers and proceedings, so far as they relate to their condition, operation and management, shall, at all times during business hours, be subject to the examination and inspection of such Commission.

"§ 8. It shall be unlawful for any person, firm or corporation who shall operate any country grain elevator or country warehouse, under this act, to enter into any contract, agreement, understanding or combination with any other person, firm or corporation, who shall operate any other country grain elevator or country grain warehouse under this act, for pooling of the earnings or business of other different and competing grain elevators or warehouses so as to divide between them the aggregate or net proceeds of the earnings or business of such grain elevators or warehouses, or any portion thereof; and in case of any agreement for the pooling of the earnings or business aforesaid, each day of its continuance shall be deemed a separate offense.

"§ 9. Any person, firm or corporation who is guilty of any of the misdemeanors specified in this act, or who is guilty of violating any of the provisions of this act, shall, on conviction, be punished by a fine of not less than fifty dollars and not more than five hundred dollars, and in case a natural person is so convicted, he may be imprisoned until the fine is paid or until discharged by due course of law; and in case a corporation is so convicted, the fine may be collected by execution, as judgments are collected in civil actions, or the property of the corporation may be sequestered and charged with the same in appropriate legal proceedings.

"§ 10. All laws and parts of laws inconsistent with this act are hereby repealed.

"§ 11. This act shall take effect and be in force from and after the date of its passage.'

During the time mentioned all grain of every kind and description received into or deposited or handled in or shipped from the warehouse was grown in Minnesota, and was sold and delivered to the defendant by and received into the warehouse from citizens and residents of or other persons doing business in Minnesota, the weights, grades, dockage and inspection of all such grain having been fixed by mutual agreement between such persons and the company without controversy in respect thereto, and in no other manner and by no other persons; and no weighing, grading, docking or inspection of or supervision or regulation of any grain was performed or attempted or offered to be done or performed in or about the warehouse on the receipt or shipment of grain or at any other place or time by any person delegated or furnished by or acting under the authority of the State of Minnesota or of any law thereof or of the Railroad and Warehouse Commission of Minnesota or any rule, regulation, officer, agent or representative thereof, or by any person in any capacity whatsoever.

The defendant company never applied to the Railroad and Warehouse Commission for license to receive, ship, store or handle any grain in its elevator, and never procured a license therefor from the Commission.

The parties stipulated and agreed that the plaintiff would make no claim of right to maintain the action except under and by virtue of the law in question.

Such being the case made by the finding of facts, the relief asked was denied, the court of original jurisdiction holding that the statute was not a lawful exercise of the police power and was repugnant as well as to the Constitution of Minnesota as to section one of the Fourteenth Amendment in so far as it declared warehouses and elevators in which only the grain of the owner was received, stored, shipped or handled to be public elevators subject to the supervision of the Railroad and Warehouse Commission.

The case was carried to the Supreme Court of Minnesota, and the judgment was reversed. That court, speaking, by Judge Canty, said: "If the business carried on at this warehouse consisted of nothing more than storing defendant's own grain we would concede that such business would warrant but little interference or regulation of it by the State; but that business does consist of something more. It was conceded on the argument, and is fairly to be inferred from the findings and stipulation of facts, that the grain is purchased, weighed, graded and delivered at the warehouse, and that defendant, with its own scales and appliances, weighs and grades the grain. Under these circumstances the warehouse is a sort of public market place, where the farmers come with their grain for the purpose of selling the same, and where the purchaser, a party in interest, acts as marketmaster, weighmaster, inspector and grader of the grain. Surely such a business is of a

public character and is sufficiently affected with a public interest to warrant a very considerable amount of regulation of it by the State. The business carried on by defendant at its warehouse is similar to that carried on at a large number of other warehouses and elevators in this State. The grain crops of this State constitute by far the most important part of its commerce and its greatest resource. It is important to see that correct weights are had; that uniform grades are given; that the proper amount of dockage and no more is taken; that no dishonest practices are allowed and no undue advantage is permitted to be taken. Said chapter 148 requires the person operating such an elevator or warehouse to procure a license to be issued by the State Railroad and Warehouse Commission, for which a fee of one dollar per year must be paid. The act also provides that such license may be revoked by the Commission if the warehouse or elevator is operated in violation or in disregard of the laws of this State. Section 2 provides that any person attempting to run such an elevator or warehouse without a license may be enjoined in a suit for that purpose. Section 3 provides that the Commission may make suitable and necessary rules and regulations for the government of public country warehouses and elevators. Then follow other provisions. There are undoubtedly many provisions in the act which apply only to warehouses and elevators in which grain is stored for others or for the public, and which provisions do not and cannot apply to such warehouses as the one here in question. There are, perhaps, provisions in the act which it would be unconstitutional to apply to such a warehouse; but such matters need not be considered at this time. The provision recognizing a license is not one of these. This disposes of the only question argued which it is necessary to consider." *State ex rel. &c.* v. *W. W. Cargill Co.*, 77 *Minn.* 223.

Judge Mitchell delivered a separate opinion, in which he said that in view of the fact, among others, that grain was the principal agricultural product of the State, that in its purchase and sale there was great liability to abuse in the matter of weights and grades, and that these were usually determined by the purchaser with his own instrumentalities, he agreed with the court that although the owner of a warehouse use it exclusively for the storage of his own grain, yet if he used it for the purpose of buying grain from the public, thus rendering it, in effect, a public market, his business was a proper subject of police regulation by the State to the extent of providing such rules and regulations as were reasonably necessary to secure to the public just and correct weights and grades. He was also of opinion that the requirement of a license might be a reasonable regulation in such cases as a means of enabling State officials to ascertain who were engaged in the business. But he was of opinion that the provisions of the statute constituted a system of rules and regulations the different parts of which were so connected with and dependent upon each other that it was

in many instances impossible to separate them; that many of them were wholly inapplicable to warehouses not used for the storage of grain for others. Some of them were, in his judgment, clearly not within the police power of the State as applied to warehouses not used for the storage of grain for others. Considering the case only upon the lines followed by the majority, Judge Mitchell was of opinion that in view of the connection and interdependence of its various provisions the whole act should be held invalid as to warehouses not used for the storage of grain for others.

We have seen that the only relief asked by the State was that the defendant company be restrained and enjoined from the further operation of its elevator in receiving, storing or handling of wheat or other grains until it was duly licensed therefor by th Railroad and Warehouse Commission. It was, in effect, adjudged that a license from that Commission was a condition precedent to the right of the defendant company to use or operate its elevator or warehouse in the manner and for the purposes indicated; also, that although the statute might contain many provisions not applicable to warehouses like the one owned by the defendant, and other provisions that, perhaps, were unconstitutional when applied to business like that in which the company was engaged, the provision requiring a license could stand and be enforced,

The questions just stated are questions of local law, and in determining whether the statute violates any right secured by the Federal Constitution we must, in the particulars named, accept the interpretation put upon it by the State court. In *Tullis* v. *Lake Erie & Western Railroad*, 175 *U. S.* 348, 353, the question was as to the constitutionality of a statute of Indiana relating to railroads and other corporations, except municipal corporations. The Supreme Court of that State held that the statute was capable of severance, and that its provisions as to railroads were not so connected in substance with the provisions relating to other corporations that their validity could not be separately determined. This court followed that view, declaring it to be an elementary rule that it should adopt "the interpretation of a statute of a State affixed to it by the court of last resort thereof." *See also Missouri Pacific Railway Co.* v. *Nebraska*, 164 *U. S.* 403, 414; *Chicago, Milwaukee &c. Railway Co.* v. *Minnesota*, 134 *U. S.* 418, 456; *St. Louis, Iron Mountain &c. Railway* v. *Paul*, 173 *U. S.* 404, 408.

Pursuant to this rule, and without expressing any opinion on the question, we assume that the provision requiring a license from any person, firm or corporation proposing to engage in the business described in the first section embraces the defendant company; that such provision may stand alone; and that its validity may be determined without reference to other provisions of the statute.

Thus considering the statute, we are of opinion that the mere requirement of a license from a person, firm or corporation engaged in such

business as that conducted by the defendant is not forbidden by the Fourteenth Amendment of the Constitution of the United States. "The liberty mentioned in that Amendment," we have said, "means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned." *Allgeyer* v. *Louisiana*, 165 *U. S.* 578, 589. But to require the defendant company to obtain a license is not forbidden by the Amendment. The authority to make such a requirement is to be referred to the general power of the State to adopt such regulations as are appropriate to protect the people in the enjoyment of their relative rights and privileges, and to guard them against fraud and imposition. *Dent* v. *West Virginia*, 129 *U. S.* 114, 122; *Plumley* v. *Massachusetts*, 155 *U. S.* 461. The State court well said that the defendant's warehouse could be fairly regarded "as a sort of public market where the farmers come with their grain for the purpose of selling the same, and where the purchaser, a party in interest, acts as marketmaster, weighmaster, inspector and grader of the grain." We cannot question the power of the State, so far as the Constitution of the United States is concerned, to require a license for the privilege of carrying on business of that character within its limits—such a license not being required for the purpose of forbidding a business lawful or harmless in itself, but only for purposes of regulation.

The defendant however insists that some of the provisions of the statute are in violation of the Constitution of the United States, and if it obtained the required license, it would be held to have accepted all of its provisions, and (in the same words of the statute) "thereby to have agreed to comply with the same." § 1. The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute or with any regulations prescribed by the State Railroad and Warehouse Commission that are repugnant to the Constitution of the United States. A license will give the defendant full authority to carry on its business in accordance with the valid laws of the State and the valid rules and regulations prescribed by the Commission. If the Commission refused to grant a license, or if it sought to revoke one granted, because the applicant in the one case, or the licensee in the other, refused to comply with statutory provisions or with rules or regulations inconsistent with the Constitution of the United States, the rights of the applicant or the licensee could be protected and enforced by appropriate judicial proceedings.

But the further contention of the defendant company is that the requirement of a license from the owners of elevators and warehouses situated on the right of way of a railroad at one of its stations or sidings other than at terminal points, without requiring a license in respect of elevators and warehouses differently situated, is a denial of the equal protection of the laws, and makes the statute obnoxious to the principle that "no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition." *Barbier* v. *Connolly*, 113 *U. S.* 27, 31; *Pembina Mining Co.* v. *Pennsylvania*, 125 *U. S.* 181.

Assuming that the defendant is entitled, upon this record, to invoke the benefit of the clause of the Fourteenth Amendment forbidding a State from denying to any person within its jurisdiction the equal protection of the laws, we adjudge that as the statute applies to all of the class defined in its first section, it is not invalid by reason of its non-application to those who own or operate elevators *not* situated on the right of way of a railroad. The railroad, as this court has often said, is a public highway established primarily for the convenience of the public, and—subject always to any right acquired by the railroad company under an inviolable contract with the State—the use of such a highway may be so regulated as to promote the public convenience, provided such a regulation be not arbitrary in its character and does not materially interfere with the enjoyment by the railroad company of its property. The right of way is so closely connected with the operations of the railroad company that its use may be so regulated by the State as to promote the ends for which the corporation was created, and thus subserve the interests of the general public without interfering unreasonably with the company's management of its property. If in the judgment of the State it was necessary for the public interests, or beneficial to the public, that elevators and warehouses of the kinds described should be operated only under a license and under such regulations as may be rightfully prescribed, it would be going very far to hold that such a classification was so unreasonable as to justify us in adjudging that the requirement of a license was void as denying the equal protection of the laws. No such judgment could be properly rendered unless the classification was merely arbitrary or was devoid of those elements that are inherent in the distinction implied in classification. We cannot perceive that the requirement of a license is not based upon some reasonable ground—some difference that bears a proper relation to the classification made by the statute. *Gulf, Col. & Santa Fé Ry.* v. *Ellis*, 165 *U. S.* 150, 165. It is worthy of observation in this connection that it was neither alleged nor proved that there were in the State any elevators or warehouses that were not situated on the right of way of a railroad company.

It is also contended that the requirement of a license from the defendant company is inconsistent with the power of Congress to regulate commerce among the States. This view cannot be accepted. The statute puts no obstacle in the way of the purchase by the defendant company of grain in the State or the shipment out of the State of such grain as it purchased. The license has reference only to the business of the defendant at its elevator and warehouse. The statute only requires a license in respect of business conducted at an established warehouse in the State between the defendant and the sellers of grain. We do not perceive that in so doing the State has entrenched upon the domain of Federal authority, or regulated or sought to regulate interstate commerce. In no real or substantial sense is such commerce obstructed by the requirement of a license.

Without expressing any opinion as to the extent to which the Railroad and Warehouse Commission may supervise the business of a person, firm or corporation receiving a license under the statute, and restricting our decision to the only question necessary to be decided, we adjudge that the statute of Minnesota, so far as it requires a license for conducting such business as that in which the defendant is engaged, is not repugnant to the Constitution of the United States.

The judgment is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.